(2008) 10 P&H CK 0127

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 915-SB of 2000

Raju		APPELLANT
	Vs	
State of Hayana		RESPONDENT

Date of Decision: Oct. 21, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 293, 313, 428
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15, 35, 54

Citation: (2009) 1 RCR(Criminal) 778

Hon'ble Judges: Sham Sunder, J

Bench: Single Bench

Advocate: Rahul Vats and Ashwani Verma,s No. 1, for the Appellant; A.K. Jindal, AAG, Haryana, for the Respondent

Judgement

Sham Sunder, J.

This appeal is directed against the judgment of conviction dated 6.9.2000, and the order of sentence dated 8.9.2000, rendered by the Court of Addl. Sessions Judge, Fatehabad, vide which it convicted the accused/appellants (Raju and Roopa Ram), for the offence, punishable u/s 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter called as `the Act'' only) and sentenced them, to undergo rigorous imprisonment for a period of ten years each, and to pay a fine of Rs. 1 lac each, and in default of payment of the same, to undergo rigorous imprisonment for another period of one year each, for having been found in possession of 20 bags, each containing 40 kgs. poppy-husk, without any permit or licence. However, the Court acquitted Hansa, Chhinda Ram, Pirthi Ram, and Hansa @ Hans Raj.

2. The facts, in brief, are that on 13.12.1997, Ajaib Singh, SI, alongwith other police officials, was present in the Main Bazar, at Ratia, in a jeep, when he received a secret information that Jeep bearing No. GJ- 17-9916, driven by Hans Ram S/o Kesar Ram, followed by an Eicher tractor bearing No. PBS-5524, driven by Raju S/o Shikari, was

coming from the direction of Dhani Jakhan Dadi, towards Ratia. He was also informed that Ram Dass, Pirthi Ram and Chhinda Bajigarh, residents of Ratangarh, were accompanying Hans Raj, in the jeep whereas Roopa Ram S/o Panju Ram, and Hansa S/o Ram Lal, were accompanying Raju, in the tractor. He was further informed that the tractor was carrying a huge quantity of poppy straw, in its trolley, and it was being piloted by the jeep aforesaid. He was also informed that if the jeep was not stopped for checking, the tractor trolley loaded with poppy straw, shall continue to follow it (jeep) and poppy straw could be recovered from the tractor trolley. Thereafter, the police party started waiting for the arrival of the tractor trolley, and the jeep aforesaid. Ajaib Singh, SI, was talking to Ghisa Ram, ASI, etc., when jeep No. GJ-17-9916, came from the direction of Dhani jakhan Dadi. The said jeep was not stopped by Ajaib Singh, SI, and it proceeded towards village Ratangarh. After that Govt. Jeep No. HR-20-D-342 was brought to the road and stopped, in front of tractor No. PBS-5524, which came to that place with a trolley attached to it. Raju S/o Shikari, was driving the tractor, while Roopa Ram S/o Panju, was sitting on the left mudguard and Hansa S/o Ram Lal, was sitting on the right mudguard of the tractor. Hansa S/o Ram Lal, made good his escape, but Raju, who was driving the tractor, and Roopa, who was sitting on the left mudguard of the tractor, were apprehended, at the spot. Thereafter, the search of the tractor-trolley was conducted, in the presence of Charanjit Singh, DSP, Fatehabad, who was called to the spot, by sending a wireless message, as a result whereof, 20 bags, each containing 40 Kgs. Poppy-husk, were recovered therefrom. A sample of 200 grams, from each of the bags, was taken out, and the remaining poppy-husk, was kept in the same bags. The samples, and the bags, containing the remaining poppy-husk, were converted into parcels, duly sealed, and taken into possession, vide a separate recovery memo. Ruqa was sent to the Police Station, on the basis whereof, formal FIR was registered. Rough site plan of the place of recovery, was prepared. The statements of the witnesses, were recorded. The remaining accused were also arrested. After the completion of investigation, the accused were challaned.

3. On appearance, in the Court, the copies of documents, relied upon by the prosecution, were supplied to the accused. Charge u/s 15 of the Act, was framed against them, to which they pleaded not guilty, and claimed judicial trial.

4. The prosecution, in support of its case, examined Karan Singh, HC, (PW-1), Mahabir Singh, Constable (PW-2), Charanjit Singh, DSP, (PW-3), Ghisa Ram, ASI, (PW-4), Raj Kumar, SI (PW-5), Gurcharan Singh (PW-6), and Ajaib Singh, SI, (PW-7), the Investigating Officer. Thereafter, the Public Prosecutor for the State, closed the prosecution evidence.

5. The statements of the accused, u/s 313 Cr.P.C., were recorded, and they were put all the incriminating circumstances, appearing against them, in the prosecution evidence. They pleaded false implication. They, however, did not lead any evidence, in their defence.

6. After hearing the Public Prosecutor for the State, the Counsel for the accused, and, on going through the evidence, on record, the trial Court, convicted and sentenced Raju and Roopa Ram, accused, as stated hereinbefore, whereas it acquitted Hansa, Chhinda Ram, Pirthi Ram, and Hansa @ Hans Raj.

7. Feeling aggrieved, against the judgment of conviction, and the order of sentence, rendered by the trial Court, the instant appeal, was filed by Raju and Roopa Ram, appellants.

8. I have heard the learned Counsel for the parties, and have gone through the evidence and record of the case, carefully.

9. The Counsel for the appellants, at the very outset, submitted that though a secret information was received, yet no independent witness was joined, though sufficient time was with the police party, to join him. The submission of the Counsel for the appellants, in this regard, does not appear to be correct. As soon as, the secret information, was received by the Investigating Officer, he alongwith other police officials started waiting for the arrival of the jeep, and the tractor trolley. There is nothing, on the record, that, in the meanwhile, any independent witness came present at the spot, but was not intentionally and deliberately joined by the Investigating Officer. The first concern of the Investigating Officer, was to see that the jeep piloting the tractor trolley, and the said tractor trolley, carrying the poppy-husk, did not escape, so as to defeat the very purpose of holding a picket. Under these circumstances, no independent witness could be joined. The mere fact that no independent witness could be joined, on account of the aforesaid reasons, in itself, was not sufficient to come to the conclusion, that the sample parcels, were tampered with, until the same reached the office of the Forensic Science Laboratory. In the absence of joining of an independent witness, the evidence of the official witnesses, cannot be distrusted and disbelieved. In the face of the evidence of the official witnesses only, the Court is required to scrutinize the same, carefully and cautiously. After careful and cautious scrutiny, if the Court comes to the conclusion, that the same does not suffer from any serious infirmity, the same can be believed. The evidence of the official witnesses, in the instant case, has been subjected to indepth scrutiny, and nothing came to the fore, which may go to discredit the same. The evidence of the official witnesses, was rightly found to be cogent, convincing, reliable and trustworthy, by the trial Court. The trial Court, was right, in placing reliance on the same, in coming to the conclusion, that the accused committed the offence, punishable, u/s 15 of the Act. This Court, after reappraisal of the evidence of the prosecution witnesses, also comes to the same conclusion. In Akmal Ahmed v. State of Delhi, 1999 (2) RCC 297 (S.C.), it was held that, it is now well-settled, that the evidence of search or seizure, made by the police, will not become vitiated, solely for the reason that the same was not supported by an independent witness. In State of NCT of Delhi v. Sunil, (2000) 1 S.C.C. 748, it was held as under :-

"It is an archaic notion that actions of the Police officer, should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the Police. At any rate, the Court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way round. The official acts of the Police have been regularly performed is a wise principle of presumption and recognized even by the Legislature."

10. The principle of law, laid down, in the aforesaid authorities, is fully applicable to the facts of the present case. In these circumstances, mere non-joining of an independent witness, when the evidence of the prosecution witnesses, has been held to be cogent, convincing, creditworthy, and reliable, and there was no reason, on their part, to falsely implicate the accused, no doubt, is cast on the prosecution story. The submission of the Counsel for the appellants, in this regard, being without merit, must fail, and the same stands rejected.

11. It was next submitted by the Counsel for the appellants, that the mere fact that Roopa Ram, was sitting on a mudguard of the tractor, did not mean that he was in conscious possession of the poppy-husk, allegedly recovered therefrom. The submission of the Counsel for the appellants, in this regard, does not appear to be correct. A big haul of poppy-husk, was being carried in the tractor trolley. It was not a small quantity of poppy-husk, which was being carried in the tractor trolley, which could escape the notice of Roopa Ram, though he was sitting on the mudguard. It was, thus, within the special means of knowledge of Raju and Roopa Ram, accused, as to how, 20 bags, each containing 40 Kgs. Poppy-husk, were found in the tractor trolley and to which destination, they were being taken. They were required, to explain the aforesaid circumstances. They, however, failed to do so. The accused were, thus, found in possession of the bags, containing poppy-husk. Once the possession of the accused, and their control over the contraband was proved, then statutory presumption under Sections 54 and 35 of the Act, operated against them, that they were in conscious possession thereof. Thereafter, it was for them, to rebut the presumption, by leading cogent and convincing evidence. However, the appellants failed to rebut that presumption, either during the course of cross-examination of the prosecution witnesses, or by leading defence evidence. In these circumstances, the trial Court was right, in holding that they were in conscious possession of the contraband. Section 54 of the Act ibid reads as under :-
"Presumption from possession of illicit articles:- In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act, in respect of :-

a) any narcotic drug or psychotropic substance or controlled substance;

b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controller substance; or

d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily."

12. Section 35 which relates to the presumption of culpable mental state, is extracted as under :-

"Presumption of culpable mental state :- (1) In any prosecution for an offence under this Act, which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation:- In this section "culpable mental state" includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact. (2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability."

13. From the conjoint reading of the provisions of Sections 54 and 35, referred to hereinbefore, it becomes abundantly clear, that once an accused, is found to be in possession of a contraband, he is presumed to have committed the offence, under the relevant provisions of the Act, until the contrary is proved. According to Section 35 of the Act ibid, the Court shall presume the existence of mental state, for the commission of an offence, and it is for the accused to prove otherwise. In Madan Lal and another v. State of H.P., 2003 (4) RCR (Criminal) 100 : 2004 (1) Apex Criminal 426 : 2003 SCC(Crl.) 1664 it was held as under :-

The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles."

14. The facts of Madan Lal''s case (supra) in brief, were that accused Manjit Singh was driving the Car and the remaining four accused, were sitting therein. One steel container (dolu) in a black coloured bag, was recovered from the said Car, which contained 820 gms. charas. All the accused were convicted and sentenced by the

trial Court, holding that they were found in conscious possession of charas, despite the fact, that one of the accused, admitted his conscious possession, of the contraband. The Apex Court held that the trial Court was right in coming to the conclusion, that the accused were found in conscious possession of charas, as they had failed to explain, as to how, they were travelling in a Car together, which was not a public vehicle. The Apex Court upheld the conviction and sentence awarded to the accused. In the instant case, the accused failed to explain, as to how, 20 bags, each containing 40 kgs. poppy-husk were found in the tractor trolley. The facts of Madan Lal''s case (supra) are similar and identical to the facts of the present case. The principle of law, laid down, in Madan Lal''s case (supra) is fully applicable to the facts of the present case. In the instant case, in his statement, u/s 313 Cr.P.C., the accused/appellants took up the plea, only of false implication. They did not take up the plea, that they were not aware of the contents of the bags, lying therein. As stated above, the accused miserably failed to rebut the statutory presumption, referred to above. Thus, their conscious possession, in respect of the contraband, was proved, and, as such, the submission of the Counsel for the appellants, being without merit, must fail, and the same stands rejected.

15. It was next submitted by the Counsel for the appellants, that the appellants were merely labourers, and were neither the owners, nor had any connection, whatsoever, with the poppy-husk, allegedly lying in the tractor- trolley. The submission of the Counsel for the appellants, in this regard, does not appear to be correct. Such a plea was not taken up by the appellants, during the course of the cross-examination of the prosecution witnesses, nor in their statements, u/s 313 Cr.P.C. In their statements, u/s 313 Cr.P.C., the only plea taken up by them, was to the effect that they were falsely implicated, in the instant case. Had they been labourers, they would have certainly taken the plea that, no doubt, they were sitting in the tractor-trolley, only in the capacity of labourers, for loding or unloading the bags, containing poppy-husk, and, thus, were not in conscious possession thereof. Now, at the appellate stage, such a plea taken up by them, can be said to be only an afterthought, just with a view to wriggle out of the criminal liability. Neither such a plea was taken up by them, nor they led any evidence, in support thereof. Under these circumstances, the submission of the Counsel for the appellants, being without merit, must fail, and the same stands rejected.

16. It was next submitted by the Counsel for the appellants, that no question was put to the accused, in their statements, recorded u/s 313 Cr.P.C., that they were in conscious possession of the poppyhusk. It may be stated here, that in statement, u/s 313 Cr.P.C., only the incriminating circumstances, appearing against the accused, in the prosecution evidence, are required to be put. There is no provision, in the Cr.P.C., that in the statement, u/s 313 Cr.P.C. either the provisions of law, or the presumption, obtaining under the provisions of law, should also be put to the accused. The accused were, however, put a specific question, that one of them, was the driver of the tractor-trolley, and the other was sitting on the mudguard of the

said tractor-trolley, in which 20 bags, each containing 40 kgs, Poppy-husk, were lying. They were, thus, made aware that they were in possession of, and in control over the bags, containing poppy-husk, lying in the tractortrolley. After their possession was proved, then the presumption under the aforesaid provisions of law, operated against them, that they were in conscious possession thereof. In this view of the matter, the submission of the Counsel for the appellants, being without merit, must fail, and the same stands rejected.

17. It was next submitted by the Counsel for the appellants, that there was a delay of 09 days, in sending the samples, to the office of the Forensic Science Laboratory, which remained unexplained, and, as such, the possibility of tampering with the same, could not be ruled out. The submission of the Counsel for the appellants, in this regard, does not appear to be correct. The mere fact that delay, in sending the samples, to the office of the Forensic Science Laboratory, was not explained, in itself, was not sufficient, to come to the conclusion, that the sample parcels were tampered with, at any stage. In such a situation, the Court is required to fall back upon the other evidence, produced by the prosecution, to complete the link evidence. The other evidence, produced by the prosecution, has been subjected to indepth scrutiny, and, it has been found to be cogent, convincing, reliable, and trustworthy. From the other evidence, produced by the prosecution, it was proved that none tampered with the sample parcels, until the same reached the office of the Forensic Science Laboratory. Above all, there is report of the Forensic Science Laboratory, Ex.PX, which clearly proves that the seals on the samples, were found intact, and agreed with the specimen seals, as per the forwarding authority. The report of the Forensic Science Laboratory is per-se admissible into evidence, in its entirety, as per the provisions of Section 293 Cr.P.C. No challenge was made to the report, Ex.PX. The delay, in sending the samples, to the office of the Forensic Science Laboratory, therefore, did not prove fatal to the case of the prosecution. Had no other evidence, been produced, by the prosecution, to prove that the sample parcels, remained untampered with, until the same reached the Laboratory, the matter would have been different. In State of Orissa v. Kanduri Sahoo, 2004 (1) RCR (Criminal) 196 : 2004 (2) Apex Criminal 110 (SC), it was held that mere delay in sending the sample to the Laboratory is not fatal, where there is evidence that the seized articles remained in safe custody. In Narinder Singh @ Nindi v. State of Punjab, 2005 (3) RCR(Criminal) 343 (P&H), which was a case, relating to the recovery of 4 Kgs. of opium, the samples were sent to the office of the Chemical Examiner, after 23 days. All the samples were intact. In these circumstances, it was held that, in the face of other cogent, convincing, reliable, and trustworthy evidence, produced by the prosecution, to prove the completion of link evidence, it could not be held that the possibility of tampering with the samples, could not be ruled out. The principle of law, laid down, in the aforesaid authorities, is fully applicable to the facts of the instant case. Therefore, in the instant case, unexplained delay of 09 days, in sending the samples to the office of the Forensic Science Laboratory, did not at all

matter much. In this view of the matter, the submission of the Counsel for the appellants, being without merit, must fail, and the same stands rejected.

18. It was next submitted by the Counsel for the appellants, that the Investigating Officer, sent the ruqa, and, as such, became the complainant. He further submitted that he also investigated the case. He further submitted that the practice adopted by the Investigating Officer, was contrary to the provisions of law. The submission of the Counsel for the appellants, in this regard, does not appear to be correct. However, it may be stated here, that in S. Jeevanantham Vs. The State through Inspector of Police, TN, a case decided by the Apex Court, it was held that if the Police Officer, who is the complainant, also conducts the investigation of the case, and it is not proved that any prejudice was caused to the accused, on account of the adoption of such a course, the accused cannot be acquitted. In this case, no evidence was led by the accused, that a prejudice was caused to him, on account of adoption of the aforesaid course, by the Investigating Officer. In S. Jeevanantham''s case (supra) the recovery was effected from the accused, by a Police Officer, who sent the ruqa, and, thus, became the complainant. The same very Police Officer, conducted the investigation. Under these circumstances, it was held that since no prejudice or bias was shown to have been caused to the accused, on account of the adoption of such a practice, by the Police Officer, the investigation, and the subsequent proceedings, did not become invalid. In this view of the matter, the submission of the Counsel for the appellants, being without merit, must fail, and the same stands rejected.

19. No other point, was urged, by the Counsel for the parties.

20. In view of the above discussion, it is held that the judgment of conviction and the order of sentence, rendered by the trial Court, are based on the correct appreciation of evidence, and law, on the point. The same do not warrant any interference, and are liable to be upheld.

21. For the reasons recorded, hereinbefore, the appeal is dismissed. The judgment of conviction dated 6.9.2000, and the order of sentence dated 8.9.2000, are upheld. If the appellants are on bail, their bail bonds, shall stand cancelled. The Chief Judicial Magistrate, Fatehabad, shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

22. The trial Court is directed to initiate proceedings, under the relevant provisions of law, regarding the confiscation of the tractortrolley, if already not initiated, complete the same within 2 months, from the date of receipt of a copy of the judgement, and submit compliance report immediately, thereafter.

23. The District and Sessions Judge, Fatehabad, shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted

immediately thereafter.