
(2012) 2 ShimLC 1188

High Court of Himachal Pradesh

Case No: Criminal Appeal No. 360 of 2011

Tula Singh Sunar

APPELLANT

Vs

State of Himachal
Pradesh

RESPONDENT

Date of Decision: April 19, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 313#Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€” Section 20(b)(ii)(B), 42(2)

Citation: (2012) 2 ShimLC 1188

Hon'ble Judges: Surinder Singh, J

Bench: Single Bench

Advocate: Virender Verma, Legal Aid, for the Appellant; A.K. Bansal, Additional Advocate General and Mr. R.P. Singh, Assistant Advocate General, for the Respondent

Final Decision: Dismissed

Judgement

Surinder Singh, J.

The appellant, a Nepali, was convicted by the learned trial Court in case No. 12FTC/7 of 2010, decided on

13.3.2011, for the offence punishable u/s 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, in short ""the Act"", for allegedly

keeping in his possession 704 grams of ""Charas"" in the total recovered stuff of 2 kilogram 500 grams, as such, sentenced to undergo rigorous

imprisonment for a period of 5 years and to pay a fine of Rs. 20,000/- and in default of payment of fine, to further undergo simple imprisonment for

a period of six months. The appellant is undergoing the sentence imposed by the learned trial Court. He has filed the present appeal and requested

to provide him legal aid. Vide order dated 30th September, 2011, Shri Virender Verma, Advocate was appointed as Legal Aid Counsel for him,

paper book was supplied to him free of cost and was also allowed to inspect the file. A copy of the said order was ordered to supply to him as

well as the appellant through the Jail Superintendent concerned. The appeal was admitted for hearing on 30th September, 2011. The record of the

learned trial Court was sent for and examined in the light of the submissions made by the learned Counsel for the parties.

2. Precisely, the case of the prosecution, as emerges from the evidence of the prosecution, can be stated thus. During the intervening night of 30-

11/1.12.2009, a police party headed by PW-10, ASI Rama Nand was deputed on Nakabandi on National Highway No. 22, near Police Station,

Dharampur and to this effect, Rapat Ext. PW-8/A was recorded in the daily diary register.

(i) During the Naka, around 11.30 p.m., HRTC bus bearing registration No. HP-25-0481 was enroute to Delhi from Reckongpeo. It was stepped

at the Naka point. The police on its checking, recovered 7 kilogram 500 grams of ""Charas"". The accused was not known. An FIR No. 148/2009

was registered. PW-10, ASI Rama Nand remained busy in the proceedings in that case. PW-11 Inspector/SHO Jagdish Chand thereafter took

over the Naka point. Around 2.30 a.m., another bus of HRTC, bearing registration No. HP-06A-7501 came from Kalpa and was going to

Chandigarh. It was stopped for checking. PW-11 aforesaid accompanied by the other police officials entered the bus from the front door and

PW-9 Head Constable, Krishan Chand from the rear door.

(ii) PW-2 Daya Ram was the conductor of the bus and Shri Ashok Kumar was the driver. Both of them were associated in the search operation.

When PW 11, Inspector/SHO Jagdish Chand reached near seat No. 21, he noticed the appellant, hereinafter referred to as ""the accused"",

occupying that seat. He was totally perplexed which gave reason to raise suspicion against him. His identity was asked. He had kept a bag

clined between his legs. On checking the bag, the said officer found two plastic envelopes, one containing 2 kilogram and 500 grams of black

colored stuff in the shape of small balls, wrapped in T-shirt Ext. P-3 and another containing 300 grams of flattened pieces of black color

substance, wrapped in pant Ext. P-4. The recovered stuff was smelling like ""Charas"". As such, the contraband was made into one parcel and

sealed with the seal, producing the impression of English letter "B". The NCB forms in triplicate were prepared. The facsimile of the seal was also

put on each of the NCB forms, one of which is Ext. PW 11/C.

(iii) PW-11, Inspector/SHO Jagdish Chand prepared memo of seal Ext. PW-11/A. He also put the sample of the seal on the parcel. The parcel of

the recovered stuff was got signed from PW-2 Daya Ram, Ashok Kumar, driver and PW-3 Tunender Kumar Negi, a passenger sitting beside the

accused. The seal impression was also taken on a piece of cloth Ext. PW-2/A separately, which was signed by Ashok Kumar, driver and PW-2

Daya Ram.

(iv) The case property was taken into possession vide memo Ext. PW-2/E in the presence of the witnesses, aforesaid. PW-11, Inspector/SHO

Jagdish Chand also got recorded Rapat Ext. PW-8/G in the police station, which culminated into FIR Ext. PW 11/B. He also prepared spot map

Ext. PW 11/D of the alleged recovery.

(v) The accused was arrested. He was searched and the articles found during his personal search were reflected in memo Ext. PW-2/D. Bus

tickets Ext. P10 to 13, which were recovered from the possession of the accused during his personal search, were also taken into possession by

the police. A memo regarding his arrest was also prepared and the information of his arrest was given to his sister Pavitra.

(vi) The case property was handed over to PW-8 MHC Praveen Kumar for its deposit in the Malkhana alongwith the NCB forms, sample of seal

used on the spot and a copy of the FIR. He made the entry of it in the Malkhana register, the abstract whereof is Ext. PW-8/A.

(vii) On 12.1.2009, the recovered stuff was sent to FSL, Junga through Constable PW-6 Jaswant Singh vide R.C. No. 108/09-10 Ext. PW 8/B

alongwith the sample of seal, NCB forms, FIR and the recovery memo, where these were received on the same day in the laboratory. On

obtaining its receipt Ext. A-2, the RC was handed over back to the MHC.

(viii) Special report Ext. PW-5/A was sent within the statutory time to the Superintendent of Police, Solan through PW-5, Lady Constable Sharda

Kumari, which was received in the office of the Superintendent of Police by PW-7 ASI Yashwant Singh who produced it before the

Superintendent of Police for its perusal.

(ix) The entire stuff 2.800 kg received in the Forensic Science Laboratory was examined under the various scientific tests, in which the quantity of

resin was 33.87 % w/w and in the opinion of the Chemical Examiner, the examined material was extract of cannabis and the sample of ""Charas"".

(x) The police recorded the statements of witnesses.

3. After completing the investigation, challan was presented in the Court for the trial of the accused for the offence aforesaid. He was accordingly

charge-sheeted, to which he pleaded not guilty and claimed trial.

4. To prove its case, the prosecution examined 11 witnesses. Precisely, his case in the cross-examination was that the recovery of the ""Charas

was affected from some local persons and the case was wrongly foisted against him, being a Nepali. The accused was examined u/s 313 of the

Code of Criminal Procedure. His defence is denial simpliciter. When called upon to enter upon his evidence, he did not lead any evidence in

defence.

5. At the end of the trial, he was convicted and sentenced by the learned trial Court for the offence aforesaid, to which he laid challenge in the

present appeal.

6. Shri Virender Verma, learned Counsel for the accused vehemently argued that there was prior intimation with respect to the ""Chares"" being

transported in the HRTC bus and the police neither jotted down this information nor transmitted it to the superior officer. He also argued that the

recovered stuff was not sealed on the spot. Every proceeding of the case was conducted in the police station which is fatal to the prosecution and

further on the same day, police had recovered approximately 7 kilograms ""Charas"" from another bus and accused was not known. Though, a

separate FIR was registered but it gives a rise to doubt that the police might have split the cases.

7. Contra, Shri A.K. Bansal, learned Additional Advocate General duly assisted by Shri R.P. Singh, learned Assistant Advocate General while

supporting the impugned judgment of conviction and sentence forcefully argued that not only the officials witnesses but even the independent

witnesses have also supported the case of the prosecution in material particulars. The link evidence in the present case is complete without any

contradiction. It is also argued that it was a chance recovery, thus there was no requirement of transmitting the information to the superior officer.

As such, no interference is called for.

8. I have given my thoughtful consideration to the rival contentions of the parties and carefully and meticulously examined the evidence on record.

9. PW-10 ASI Rama Nand, Investigating Officer was posted at Police Station, Dharampur at the relevant time. He categorically stated that he

was on a Naka duty during the intervening night of 31.11/1.12.2009 on National Highway No. 22 in front of Police Station, Dharampur with the

other police officials. The police party was engaged in the checking of the vehicles passing through the Naka. He also stated that a bus bearing

registration No. HP-25-0481 which was coming from Reckongpeo, was stopped wherein he recovered 7 kilograms 500 grams of ""Charas"".

Accused was not known, as such, FIR No. 148/2009 was registered in the Police Station. Since he happened to be busy in the investigation of

that case, as such, he called PW-11 Inspector/SHO Jagdish Chand, who took over the Naka duty and it was thereafter and during the same

intervening night that around 2.30 a.m., the present bus bearing registration No. HP-06A-7501 wherein the accused was traveling, was stopped

for checking. The police, during the checking of the bus, noticed that the accused was occupying seat No. 21 and totally perplexed. Thus, he in the

presence of driver Ashok Kumar, PW-2 Daya Ram, Conductor and PW-3 Tunender Kumar Negi, a student of B.A. IInd year in Post Graduate

College, Seema, Rohru, who was sitting beside the accused, asked his identity, to which the accused disclosed and further revealed that he was an

employee of a Dhaba at Kasauli, which fact, on verification later, was also found to be incorrect. At that time, the accused was found clinching a

bag between his legs. On checking, it was found to have contained 2 kilograms 800 grams of ""Charas"" and the stuff which was black in color,

round in shape, wrapped in T-shirt Ext. P-3 and pant Ext. P-4, flattened pieces, as aforesaid. It was sealed with seal impression ""B"" on the spot in

the presence of driver Ashok Kumar, PW-2 Daya Ram and PW-3 Tunender Kumar Negi. Besides them, PW-9 Head Constable Krishan Chand

and other police officials were also present.

10. PW-9 Head Constable Krishan Chand, PW-10 ASI Rama Nand and PW-11 Inspector/SHO have verbatim supported the case of the

prosecution. They were subjected to a lengthy cross-examination, but nothing material could be extracted therefrom. However, the learned

Counsel for the accused either banked on stray suggestions given to the said witnesses or some admissions made with respect to the fact that they

had prior information qua the contraband, obtaining of the scales or the execution of the documents on the spot/police station. But the statements

of the independent witnesses PW-2 Daya Ram and PW-3 Tunender Kumar Negi are consistent, truthful and without any malice, which afford

corroboration to the statements of the official witnesses with respect to the recovery from the accused. If the statements of the official witnesses

and that of the independent witnesses are pitched against each other, there is absolutely no contradiction in their statements regarding the recovery

of the aforesaid stuff from the bag to which the accused was having with him at the relevant time alongwith his personal effects, which were proved

by the witnesses during the trial.

11. Further, there is a consistency in the statements of the aforesaid witnesses so far as the sealing process is concerned. The Investigating Officer

had sealed the entire stuff on the spot with seal impression ""B"". The facsimile of the seal was taken on the NCB forms and also on certificate Ext.

PW-11/A on the spot. The Naka point and the police station is only few yards away from the National Highway, rather it is abutting National

Highway No. 22. Virtually, from the spot map, which is not disputed, it is clear that the bus was stopped in front of Police Station, Dharampur. It

is also evident from the statements of the witnesses that the police remained in the bus for about 45 minutes. The inside lights were dim, so

possibility of undertaking some proceedings in the bus and some in the police station, which was quite adjacent, on the dead night cannot be ruled

out.

12. Further, in view of the aforesaid circumstances and also the fact that the police was already on the Naka duty and PW-10 ASI Rama Nand

had recovered about 7 kilograms 500 grams of ""Charas"", around 11.30 a.m. from another bus and the daily diary also corroborates the fact that

the police was deputed on the Naka duty during the night, so it was in this context that the Investigating Officer stated that they had prior

information about the contraband being transported in the buses which is a general statement and he did not point out that they had the prior

information that in this bus the ""Charas"" was being transported by the accused.

Therefore, in my opinion, there is no infraction of Section 42(2) of

the Act.

13. Once the recovery of the above substance stands proved from the accused, it is incumbent upon the prosecution to prove that it was

contraband within the meaning of the Act. In this context, the statements of PW-11, Inspector/SHO Jagdish Chand, PW-8 MHC Praveen Kumar

and PW-7 ASI Yashwant Singh are important. PW-11 Inspector/SHO Jagdish Chand specifically stated that the recovered stuff duly sealed was

handed over to PW-8 MHC Praveen Kumar alongwith other articles recovered from the accused, which were entered by him in the Malkhana

register, as aforesaid and this fact has not been disputed by the accused in his cross-examination. Further, on the next day, the entire recovered

stuff was sent for examination through PW-6 Jaswant Singh alongwith the NCB forms and the other documents which were deposited by him on

the same day in FSL, Junga and this fact is evident from the receipt appended to R.C. This fact is corroborated by Chemical Examiner's report

Ext. PW-11/D. The Chemical Examiner's report has certified that the parcel of the recovered stuff was sealed at twelve places with seal

impression ""B"" and these seals were found intact and tallied with specimen seals sent by the forwarding authority on the NCB form-I. Therefore, it

is proved that from the time of recovery till its examination, the seals remained intact and were not tampered with.

14. Further, on the examination of the recovered stuff, as already stated above, besides other ingredients, the quantity of resin of cannabis was

found to the extent of 33.87 weight in weight, which is opined to be ""Charas"".

15. Therefore, on the aforesaid proved facts, the learned trial Court rightly convicted and sentenced the accused under the Act for keeping in his

possession 704 grams of ""Charas"", in the total recovered stuff of 2 kilogram 800 grams.

16. Confronted with the above position, Shri Virender Verma, learned Counsel for the accused prayed for reduction of the sentence. Keeping in

view the resin contents in the recovered stuff, in my opinion, the sentence awarded by the learned tried Court is already on the lower side, which

requires no interference. Thus, the appeal is without any merit, hence dismissed.