

**(2010) 10 SHI CK 0039**

**High Court of Himachal Pradesh**

**Case No:** Criminal Appeal No. 188 of 2004

Takashi Sato

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

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**Date of Decision:** Oct. 22, 2010

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 2, 20, 54

**Citation:** (2010) 3 ShimLC 449

**Hon'ble Judges:** Surinder Singh, J

**Bench:** Single Bench

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**Judgement**

Surinder Singh, J.

The appellant is a Japanese National. He was convicted and sentenced to undergo imprisonment for a period of four years and to pay a fine of Rs. 25,000/-, in default of payment of fine to further undergo imprisonment for a period of one year for allegedly keeping in possession less than the commercial quantity of Charas.

2. Feeling aggrieved and dissatisfied by the impugned judgment of conviction and sentence passed in Sessions Trial No. 49-03, on 1.3.2004, the present appeal has been filed by him, which was admitted for hearing on 3.5.2004. His sentence was suspended by this Court vide order dated 14.5.2004 on the conditions contained therein.

3. In nutshell, the prosecution case as emerges from the evidence can be stated thus.

(a) On 3.12.2002 PW8 HC Lal Singh was on patrolling duty alongwith other police officials in the area of Mahili-Nallah. They spotted the appellant coming from Nagar-side. On seeing the police party, he got perplexed, which raised a suspicion, thus he was apprehended.



(b) PW8 HC Lal Singh asked about the identity of the appellant. Thereafter expressed his doubt to him that he might be having contraband in his possession, thus asked him to exercise his option whether he was to be searched before the Magistrate or Gazetted Officer and vide memo Ext.PW1/A the appellant opted to be searched by the Head Constable aforesaid in the presence of other police officials.

(c) Before conducting the search by PW8 aforesaid he rendered himself to be searched by the accused and nothing incriminating was found. To this effect memo Ext.PW1/B was prepared.

(d) Appellant was carrying a bag. On its search, some substance was found wrapped in the polythene paper. On opening it, it was found to be Charas weighing 0.650 Kgs. in the shape of flats and wrapped like "toffees".

(e) Out of the recovered stuff, two samples of 25 grams each were separated and sealed with seal impression "H". The remaining Charas was also sealed with the same seal. The N.C.B. forms, out of which one is Ext.PW5/C, in triplicate were, filled-in on the spot. The facsimile of the seal impression was also taken on each of the sample.

(f) The case property was taken into possession vide seizure memo Ext.PW1/C, copy whereof was also supplied to the appellant. The appellant was appraised of the offence committed by him. He was arrested and arrest memo Ext.PW1/D was also prepared.

(g) Ruka Ext.PW8/B was sent through PW2 Constable Om Parkash for the registration of the case which culminated into FIR Ext.PW7/A. The site plan of the place (Ext.PW8/C) of alleged recovery was also prepared.

(h) PW8 HC Lal Singh produced the accused as well as the case property before S.H.O., Manali, on the same day.

(i) The case property was resealed by seal impression "A" and thereafter deposited with PW5 MHC Khem Chand, who deposited the same in the Malkhana. The entry thereof was made in the Malkhana register, extract whereof is Ext.PW5/A.

4. On 5.12.2002 one of the samples was sent through PW3 Constable Ghansham Singh for its deposit in the C.T.L., Kandaghat through RC Ext.PW5/B alongwith police docket.

5. After analysis, the said sample tested positive. The report is Ext.PA.

6. The special report was also sent to the Dy.S.P.\1, Manali within the stipulated period.

7. After recording the statements of the witnesses and completing the investigation, Challan was presented in the Court for the trial of the appellant.



8. Finding a prima facie case against the appellant for the offence punishable u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, in short "the Act", charge was framed to which the appellant pleaded not guilty and claimed trial.
9. To prove its case, the prosecution examined PW1 HC Parkash Chand, PW2 Constable Om Parkash, PW3 Constable Ghansham Singh, PW4 HC Dola Ram, PW5 HC Khem Chand, PW6 Constable Birbal Dass, PW7 the then Inspector Badri Singh and PW8 HC Lal Singh.
10. The appellant was also examined u/s 313 of the Code of Criminal Procedure. The circumstances which were found attendant upon from the evidence on record were put to him. His case was simplicitor denial and alleged that a false case has been foisted against him. No evidence in defence was led.
11. At the end of trial, the learned trial Court believed the prosecution evidence, as such, convicted and sentenced the appellant as aforesaid, which has been challenged in this appeal.
12. Shri Rahul Mahajan, learned Counsel for the appellant vehemently argued that the police party did not include any independent witness at the time of search and seizure of the alleged contraband and further that the evidence of the official witnesses cannot be relied upon in absence of independent corroboration. He further ventilated that there is nothing on record to show as to from where the weight and scales for weighing the alleged contraband were obtained, which throws a doubt in the prosecution case.
13. Contra, Shri J.S. Rana, learned Assistant Advocate General, supported the impugned judgment of conviction and sentence.
14. I have given my thoughtful consideration to the rival contentions of the parties and have carefully and meticulously scanned the evidence on record in order to find out the truth.
15. There is no rule of law that where the case hinges only upon the official witnesses that should not be believed. In fact the testimony of the police personnel is required to be considered in the same manner as testimony of any other witness even without looking for any corroboration from independent source, if it inspires confidence. The presumption that a person acts honestly applies as much in favour of a police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. The submission that the evidence of the official witnesses cannot be relied upon as the testimony has not been corroborated by any independent witness, cannot be accepted. However, a reference may also be made to a decision of the Apex Court in [Ajmer Singh Vs. State of Haryana](#),
16. Now, I proceed to examine the testimony of the official witnesses whether it inspires confidence or not.



17. PW8 HC Lal Singh testified the prosecution version in verbatim. He stated that since the appellant was a foreigner, therefore, when on his apprehension he was enquired about the passport and his identity. He did show his passport and his identity was found to be correct. He further stated that there was no abadi nearby, therefore, no independent witness could be joined. The appellant was carrying Pithu-bag. He was informed that he had a legal right to be searched either before a Magistrate or Gazetted Officer to which he consented to be searched by the police party and to that effect memo Ext.PW1/A was executed under his signatures. On the search of one bag of black colour, another bag was found therein and having two packets like "Toffees" and another packet wrapped in a polythene paper. On opening the packets like "Toffees" Charas was recovered and in another packet which was found wrapped in the polythene paper Charas in the shape of Chapaties (flats) was recovered. He further testified that the recovered Charas was mixed and on weight, it turned to be 650 grams and thereafter two samples of 25 grams each were taken in accordance with law and sealed as aforesaid. The remaining Charas was also sealed. The N.C.B. forms were filled-in. The facsimile of the seal used by him was taken thereon and the case property was taken into possession vide seizure memo Ext.PW1/C. A copy whereof was supplied to the appellant. His signatures in token of its receipt were also obtained. The seal after its use was handed over to HC Sarwan Kumar. The grounds of arrest were informed to the appellant. A Ruqa was sent for the registration of the case. He also prepared the site plan Ext.PW7/C with its marginal notes. He also stated that the case property alongwith the documents was produced before the S.H.O. for resealing on the same day and on 5.12.2002 special report was sent to the Officer superior. He was subjected to meticulous cross-examination. No question with respect to procurement of weight and scales was put to him. Therefore, the contentions raised by the appellant that it was not explained from where the weight and scales were taken, without having been asked from the Investigating Officer cannot be taken as a ground fatal to the prosecution. Further, it has also not been asked in the cross-examination of the said Investigating Officer that if any independent witness was available on the spot. He also testified in his examination-in-chief that there was no inhabited area nearby and no witness found present.

18. Further, PW7 Inspector Badri Singh has corroborated his version with respect to resealing the case property with his sealing producing the English letter "A" on the case property. He also proved the sample of seal used by him during the trial of the case as Ext.PW7/C-1. He further stated that he filled-up column No. 9 to 11 of the N.C.B. forms and having affixed the facsimiles of the seal thereupon.

19. PW5 MHC Khem Chand admitted having deposited the case property with him in the Malkhana bearing three seals of "H" and three seals of "A" on each of the parcel alongwith N.C.B. forms in triplicate alongwith sample seals of both the seals, qua which he made the entry in the Malkhana register, copy whereof is Ext.PW5/A and on 5.12.2002 he sent one of samples vide RC No. 166/02 Ext.PW5/B through PW6



Constable Birbal Dass and to this effect he was not cross-examined.

20. PW6 Constable Birbal Dass has stated having deposited it with C.T.L., Kandaghat on 7.12.2004 vide RC No. 166/02 Ext.PW5/B. Its receipt was also obtained from the Laboratory and deposited the same with PW5 MHC Khem Chand on his return.

21. As per report Ext.PA, the resin contents in the recovered stuff was found to be 35.39%, which comes to 230.035 grams, which is a non-commercial quantity.

22. The recovery of the aforesaid substance stands proved by the statement of PW8 HC Lal Singh duly corroborated by PW1 HC Parkash Chand and PW2 Constable Om Parkash.

23. Once the recovery is proved, the presumption can safely be drawn u/s 54 of the Act that the illicit article aforesaid was recovered from the possession of the appellant to which the appellant failed to rebut. As such, the conviction of the appellant for possessing the non-commercial quantity stands upheld.

24. Shri Rahul Mahajan, learned Counsel for the appellant submitted that as per the definition contained in Sub-section (a) of Sub-section (iii) of Section 2 of the Act, Charas means resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish. Therefore, if the percentage of resin is applied to the recovered stuff it comes to 230.035 grams, hence the sentence awarded to the appellant is excessive, thus may be reduced to maintain consistency.

25. I have also considered the aforesaid argument of the learned Counsel. I am in agreement with the submission of the learned Counsel for the appellant that the resin of cannabis plant contained in the stuff is Charas in view of Division Bench judgment rendered by this Court in Dharam Pal v. State of H.P. Latest HLJ 2007 (HP) 827.

26. Looking to the quantity of the Charas found in the possession of the appellant, in my opinion, the sentence imposed appears to be excessive in view of the judgments rendered by this Court in [Koji Tateno Vs. State of H.P.](#), [Krishan Chand Vs. State of H.P.](#), and Krishan v. State of HP 2010 (2) Him.L.R. 676. Therefore, the ends of justice would be met in case the sentence imposed by the learned trial Court is reduced from four years to two and half years and fine of Rs. 25,000/- to Rs. 20,000/-. In default of payment of fine to further undergo rigorous imprisonment for a period of six months. Thus, ordered accordingly.

27. Learned Counsel for the appellant submits at Bar that as per order of the Court the appellant has been reporting to the concerned S.H.O. every week. The appellant is hereby directed to surrender before the learned trial Court on 8th November, 2010 and appropriate instructions be also imparted to the S.H.O. concerned by the learned Assistant Advocate General to take him to custody and produce before the learned trial Court to serve out the sentence.



28. Record of the learned trial Court be returned forthwith with an authenticated copy of this judgment. After serving out the sentence, the appellant be deported in accordance with law.

29. The appeal stands disposed of in the above terms.