

State of H.P. Vs Ranjan Kumar Chadha

Court: High Court of Himachal Pradesh

Date of Decision: Aug. 20, 2010

Acts Referred: Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) " Section 20, 42, 42(1), 43, 50

Hon'ble Judges: Sanjay Karol, J; Deepak Gupta, J

Bench: Division Bench

Judgement

Deepak Gupta, J.

This Appeal by the State is directed against the judgment of the learned Sessions Judge, Kullu dated 31.3.1999 passed in Sessions Trial No. 44 of 1998 whereby the accused has been acquitted of having committed an offence punishable u/s 20 of the Narcotic Drugs

and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act).

2. The prosecution story, in brief, is that on 23.8.1998, PW-14 A.S.I. Lal Singh was on patrolling duty alongwith HC Mohan Lal (PW-12),

Constable Sant Ram (PW-13) and Constable Baldev Dass (PW-6). At about 6.30 p.m. they were at Dhalpur when PW-14 ASI Lal Singh

received secret information that one well built person wearing a white T-shirt and green trouser was present at Bus Stand Sarwari, ready to board

a bus bound for Delhi. According to the informant, this person was carrying charas with him. The secret information was recorded by PW-14 and

sent to S.P. Kullu through Constable Baldev Dass and copy of this report is Ext.PB.

3. Thereafter, PW-14 Lal Singh, HC Mohan Lal and Constable Sant Ram went to Sarwari Bus Stand and reached there at about 6.45 p.m. Sh.

Surinder Kumar Adda Incharge and Karam Singh were associated as two independent witnesses. A person having the same description as given

by the informant was found standing in the bus stand carrying a bag on his shoulder. In the presence of the witnesses this person was asked to

disclose his identity and he disclosed that he is Ranjan Kumar Chadha son of Sh. Ved Parkash Chadha, R/o House No. 2/44, Sarvpriya Vihar,

New Delhi (the accused). The police officials suspected that he may be carrying charas and gave him the option of being searched before the

police or before a gazetted officer or a Magistrate. The accused consented to be searched by the police and on the consent memo Ext.PJ,

Ext.PJ/1 was written by the accused himself. The police officials got themselves searched before the witnesses. Thereafter, in the presence of the

independent witnesses the accused was searched. Search of the bag, being carried by the accused, was also done. Amongst other articles

including the driving licence of the accused, three polythene bags were found containing charas. On being weighed, the charas was found to be 1

k.g. 250 gms.

4. Two samples of 25 grams each were drawn from the charas and remaining charas was sealed with seal "H". Seal impression was also taken on

the NCB form and seal was handed over to PW-9 Surinder Kumar. The charas was taken into possession vide recovery memo Ext.PK which

was signed by the witnesses PW-9 Surinder Kumar, PW-10 Karam Singh and PW-12 Mohan Lal. The accused was informed of the grounds of

arrest, sentence etc. vide memo Ext.PL. Ruqua Ext.PG was prepared and sent to the police station through constable Sant Ram. Site plan Ext.PP

was prepared on the spot. Statements of the witnesses were recorded. Thereafter, PW-14 came to the Police Station alongwith the accused and

deposited the case property including samples and the NCB form before the SHO who re-sealed the case property and samples with seal-X. One

of the samples was sent for chemical examinations to CTL, Kandaghat and vide report Ext.PO the sample was found to be of charas having resin

content of 33.58%. On this basis the accused was challaned with having committed an offence as aforesaid.

5. The accused pleaded not guilty and claimed trial. The defence of the accused was that when the bus was about to leave for Delhi and the

accused was sitting in the bus with some other passengers one unclaimed bag was found and the accused was wrongly stated to be the owner of

the said bag. The case of the accused is that he was falsely implicated in the case.

6. The learned trial Court, after trial, acquitted the accused on the ground that Sections 42 and 50 of the Act had not been complied with and that

the independent witnesses have turned hostile and therefore it cannot be said with certainty that the charas was recovered from the bag of the

accused.

7. It appears that learned trial Court was more or less influenced by the fact that there has been non-compliance of Sections 42 and 50 of the Act.

Section 42 of the Act is not at all applicable. It reads as follows:

42. Power of entry, search, seizure and arrest without warrant or authorisation.

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs,

revenue intelligence or any other department of the Central Government including para-military or armed forces as is empowered in this behalf by

general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the

revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general knowledge or

information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of

which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of

such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired

property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or

enclosed place, may between sunrise and sunset,-

(a) Enter into and search any such building, conveyance or place;

(b) In case of resistance, break open any door and remove any obstacle to such entry;

(c) Seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has

reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence

of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure

or freezing or forfeiture under Chapter VA of this Act; and

(d) Detail and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under

this Act: Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity

for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at

any time between sunset and sunrise after recording the grounds of his belief

(2) Where an officer takes down any information in writing under Sub-section (1) or records grounds for his belief under the proviso thereto, he

shall within seventy-two hours send a copy thereof to his immediate official superior.

8. A bare perusal of this provision shows that this Section is only applicable in the case of that prior information where the contraband has been

kept in a building, conveyance or closed place. Where the information relates to recovery to be made from a public place it is Section 43 which is

applicable and Section 43 does not lay down the conditions which form part of Section 42 of the Act.

9. As far as Section 50 of the Act is concerned the same is not at all applicable to the facts of the present case. The recovery of the contraband

substance was not made as a result of the personal search of the accused but on account of the search from his bag. In such eventuality the police

is not required to comply with Section 50 of the Act. In this behalf reference may be made to the decision of the Apex Court in *State of H.P. v.*

Pawan Kumar Latest HLJ 2004 (SC) 1247.

10. We now come to the question as to what is the effect of the independent witnesses turning hostile.

11. The law by now is well settled that even if the independent witnesses turn hostile the prosecution can rely upon the statements of the official

witnesses. The statements of the official witnesses cannot be rejected simply because they were members of the raiding party. Merely because

these witnesses happened to be police officials, their testimony cannot be discarded unless it is shown that these police officials had some hostility

or animosity towards the accused. Reference be made to the judgment of the Apex Court in *Nathusingh v. the Nathusingh Vs. The State of*

Madhya Pradesh, wherein it was observed, thus:

2. Concurrent findings of fact conclude the case against the petitioner so far as his possession of unlicensed cartridges on the date and the time and

place given in the charge are concerned. The fact that the two witnesses called from amongst the members of the public, namely, *Raghunathsingh*

(P.W. 1) and *Gambhirsingh Tomar* (P.W. 2), had turned hostile was considered by the High court and the courts below. They had held that the

two prosecution witnesses who had turned hostile could not be relied upon. Their evidence could not destroy the prosecution case or make it

doubtful. The prosecution case is fully supported by *Mahadevsingh* (P.W. 5), and *Umashankar* (P.W. 6), who are police officers. The mere fact

that they are police officers was not enough to discard their evidence. No reason was shown for their hostility to the appellant.

12. Similarly in *State of Kerala Vs. M.M. Mathew and Another*, a contention was raised that the evidence of the officers constituting the inspecting

party should be rejected since these witnesses are interested witnesses. The Apex Court rejected this contention and held as follows:

It is true that courts of law have to judge the evidence before them by applying the well recognized test of basic human probabilities and that some

of the observations made by the Sessions Judge especially one to the effect that "the evidence of officers constituting the inspecting party is highly

interested because they want that the accused are convicted" cannot be accepted as it runs counter to the well recognized principle that *prima facie*

public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be

discarded merely on the ground that being public servants they are interested in the success of their case.

13. Similar view was taken by the Apex Court in Sama Alana Abdulla Vs. State of Gujarat, Betal Singh Vs. State of M.P., and Akmal Ahmad Vs.

State of Delhi,

14. In case the independent witnesses do not support the prosecution and are declared hostile the testimony has to be discarded and cannot be

used by the defence in its favour. In case independent witnesses turn hostile, like in the present case, it may be a good reason to scrutinize the

statements of the official witnesses with greater care and caution. In case their statements are consistent and there are no material contradictions,

there is no reason why conviction cannot be based on the statements of these official witnesses. We proceed to examine the evidence in this view

of the law.

15. Coming to the evidence in the present case, the Investigating Officer, PW-14 ASI Lal Singh has completely supported the prosecution case.

According to him, after he received the secret information he alongwith the other police officials went to the bus stand at Sarwari and associated

the two independent witnesses Surinder Kumar and Karam Singh, PW-9 and PW-10. There, a person matching the description of the person

given in the secret information was found and after giving option, his bag was searched. The bag was of black and blue colour on which the words

MITRE were written. On search of the bag, besides other articles, driving licence of the accused was also recovered and three polythene bags

were found containing charas. The charas was weighed and found to be 1 k.g. 250 grams. Two samples were taken and sealed with seal "H". The

seal impression was also placed on the NCB form. All the documents i.e. the recovery memo etc. were signed by the two independent witnesses.

In cross examination, he denied the suggestion that the accused had already boarded the bus and was sitting in the bus. He also denied the

suggestion that one unclaimed bag was found in the bus and merely on the basis of suspicion the accused was linked to the said bag. He denied the

suggestion that the luggage of the accused was in another bag. This witness also denied the suggestion that the accused was beaten up and made to

sign the papers under pressure.

16. PW-12 Head Constable Mohan Lal also supported the prosecution version. His statement is also similar to that of the Investigating Officer. He

also states that after the accused identified himself, search of his bag was done in the room of Adda In-charge Surinder Kumar. Inside the bag

personal articles of the accused were found and charas weighing 1 k.g. 250 grams were recovered.

17. PW-13 Constable Sant Ram also has made an identical statement and has supported the prosecution version totally.

18. PW-7 Brestu Ram has proved the tickets Ext.PF. (12 sheets) which were recovered from the accused.

20. PW-9 Surinder Kumar is the independent witness. According to him, he was working as Adda In-charge at the relevant time. He stated that at

about 6-7 p.m. the police took one person inside the room of HRTC. According to him that person may have been the accused but he could not

exactly identify him. He further stated that no search was conducted nor any charas was recovered in his presence. Later on the police came and

took his signatures on some papers when he was sitting on the booking counter. First he refused to sign the papers but police said it is only a

formality and he was made to sign the same. He was declared hostile and cross examined by the Public Prosecutor. He admitted his signatures on

consent memo Ext.PJ, recovery memo Ext.PK, search memo of ASI Ext.PL whereby PW-14 had got his own search done and the information of

arrest which were all signed by him and they all bore the date in his hand. According to him no other person signed these papers in his presence.

He also admitted that he is a matriculate and can read Hindi and English but stated that he did not read these papers before signing them as he was

busy at the booking counter. He admitted that he had not reported to any officials or to the higher authorities or to any court that his signatures

were taken by the police without allowing him to read the same.

21. Similarly, PW-10 Karam Singh the other independent witness also turned hostile. He was also cross examined. He also admitted his signatures

on the documents Exts.PJ, PK, PM and PN. He admitted that he is literate and knows how to read and write Hindi but he did not read these

papers before signing the same. He also stated that he had not complained to anybody in this regard.

22. In view of the law which we have discussed above, we are totally discarding the evidence of the two independent witnesses who have turned

hostile. All, that is now required to be done, is scarefully scrutinize and screen the evidence of the official witnesses. On going through the

statements of these witnesses we find that they are telling the truth. Their statements are consistent with each other and also consistent and

corroborated by other material on record i.e. sending of the report to the police officials, the ruqua and other documents placed on record.

23. The story put up by the accused that an unclaimed bag was found in the bus in which he was sitting does not appear to be correct. In this case,

there was prior information and there is material on record to show that information regarding this prior information was given to the senior officials

immediately. Admittedly, the police officials had no enmity with the accused. A huge amount of contraband i.e. 1 k.g. 250 grams of charas was

recovered and could not have been falsely planted on the accused.

24. Keeping in view the entire evidence discussed above, we are also of the considered view that the prosecution has proved beyond reasonable

doubt that 1 k.g. 250 grams of contraband was recovered from the possession of the accused. However, the resin content of the same was being

33.58% the offence would be in respect of 418.75 grams only.

25. In view of the above discussion, the judgment passed by the learned trial Court is set-aside, the appeal is allowed and the accused is convicted

for having committed an offence punishable u/s 20 of the NDPS Act. His bail bonds are ordered to be cancelled. He be arrested and produced

before us on 16th September, 2010 to be heard on the question of quantum of sentence.

26. Before parting with the case, we are constrained to observe that both the independent witnesses PW-9 and PW-10 who turned hostile, stated

that they had signed the documents without reading them. PW-9 Surinder Kumar is the Adda In-charge of the bus stand. He is employed with the

HRTC and is a matriculate. PW-10 Karam Singh is an agriculturist but he is also literate person and knows how to read and write. He also admits

that he was present at the bus stand. Both these witnesses have admitted their signatures on the documents Exts.PJ, PK, PL and PM. Both these

witnesses have signed in English with their complete name and address. Their names and addresses could not have been known to the police

unless they have told the police about the same. According to their version they had signed these documents because they were in a hurry. They do

not say that they were coerced by the police to sign these documents. They also do not say that they signed these documents under duress. No

person is expected to sign the documents without verifying the contents thereof. The signing of such documents without verifying the facts can lead

to total mis-carriage of justice. Giving fabricated and false evidence with intention to procure conviction is an offence under Chapter-11 of the

Indian Penal Code. Similarly, making false statement in the Court is also an offence under the same chapter.

27. We are prima facie of the opinion that both these witnesses i.e. PW-9 Surinder Kumar and PW-10 Karam Singh are either guilty of being part

of a conspiracy to fabricate false evidence to secure the conviction of the accused or have committed perjury while testifying in Court. Their

statements in Court cannot co-exist with their signatures on the documents. However, before initiating any penal action against them we deem it fit

to issue notice to the aforesaid two witnesses, namely, PW-9 Surinder Kumar son of Shri Raghunath Dass, Adda Incharge, HRTC Keylong

Depot at Kullu, H.P. and PW-10 Karam Singh son of Shri Ram Singh, R/o Village Kangti, Tehsil Kullu, H.P. to show cause why proceedings

either for fabricating false documents or in the alternative for giving false statement in court be not initiated against them. Notice be made returnable

for 16.9.2010. The Registry is directed to register two cases separately against the aforesaid two witnesses and list the same before us on

16.9.2010.