

State of Himachal Pradesh Vs Mangal Chand

Court: High Court of Himachal Pradesh

Date of Decision: Sept. 24, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313, 417, 418, 423
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€” Section 18

Hon'ble Judges: Sanjay Karol, J; Piar Singh Rana, J

Bench: Division Bench

Advocate: Ashok Chaudhary, Additional Advocate General, Vikram Thakur, Puneet Rajta, Deputy Advocates General and J.S. Guleria, Assistant Advocate General, Advocate for the Appellant; G.R. Palsra, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Sanjay Karol, J.

The moot point, which arises for consideration in the present appeal, is as to whether in the absence of any credible legal

evidence, establishing accused Mangal Chand alias Manglu to be in exclusive ownership or possession of the fields, over which opium poppy was

being illegally cultivated, can he be convicted on the basis of testimony of police officials, namely Constable Shyam Dass (PW-.2), ASI Bala Rama

(PW. 11) and Joginder Singh (PW. 13), particularly when independent witness Mohar Singh (PW. 1) has not supported the prosecution case.

2. State has appealed against the judgment dated 12.05.2009 of the learned Special Judge, Fast Track Court, Kullu, H.P., passed in Sessions

Trial No. 25 of 2008, titled as State v. Mangal Chand alias Manglu, challenging the acquittal of respondent Mangal Chand alias Manglu

(hereinafter referred to as the accused), who stands charged for having committed an offence punishable under the provisions of Section 18 of the

Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS Act).

3. It is the case of prosecution that on 10.05.2007, SI Joginder Singh (PW. 13) accompanied by Head Constable Bala Ram (PW. 11), HHC

Sher Singh (not examined), Constable Shyam Dass and Inspector Sarwan Kumar (PW. 15), was on patrol duty at Galyana, where they received a

secret information that accused Mangal Chand alias Manglu had illegally cultivated opium in his fields. This information was sent to supervisory

officer/Dy. S.P. Kullu, through Constable Sher Singh. SI Joginder Singh associated Kuldeep Singh Patwari (PW. 10) and Mohar Singh,

Chowkidar (PW. 1) as independent witnesses. The police party, got the fields demarcated through Patwari, Kuldeep Singh (PW. 10). Khasra No.

2303 over which opium poppy had been cultivated is in joint ownership of Mangal Chand alias Manglu, Kishan Chand, Tej Ram, Raj Pal, Saju,

Jai Singh and Smt. Fagni (PW. 3). 20 plants of opium had been cut and removed from the fields. Two samples of five plants of opium each were

separated from the recovered opium plants and were sealed in separate parcels. Remaining opium plants had also been sealed in separate parcel.

NCB-1 forms (Ex. PG) in triplicate were filled up on the spot. Seal after use was handed over to Shyam Dass. Samples of the plants were taken

and sealed with a seal of seal impression "H". On the basis of Ruka (Ex. PT), FIR No. 254/07, dated 10.05.2007 (Ex. PH) under the provisions

of Section 18 of the NDPS Act, was registered at Police Station, Kullu, District Kullu, H.P., against the accused. SHO Sarwan Kumar (PW. 15)

had resealed the case property and deposited the same in the Malkhana with MHC Roop Singh (PW. 9), who sent the sample through Constable

Pradeep Kumar (PW. 8) to the Forensic Science Laboratory, Junga and report of the Chemical Analyst (Ex. PA/C) was obtained which revealed

the contraband substance to be opium poppy. With the completion of investigation, which revealed complicity of the accused in the alleged crime,

challan was presented in the Court for trial.

4. Accused was charged for having committed an offence punishable under the provisions of Section 18 of the NDPS Act, to which he did not

plead guilty and claimed trial.

5. In order to establish its case, prosecution examined as many as 15 witnesses and statement of the accused under the provisions of Section 313

of the Code of Criminal Procedure was also recorded, in which he took plea of innocence and false implication.

6. Based on the testimonies of witnesses and the material on record, trial Court acquitted the accused of the charged offence. Hence, the present

appeal by the State.

7. We have heard Mr. Vikram Thakur, learned Deputy Advocate General, on behalf of the State as also Mr. G.R. Palsra, Advocate, on behalf of

the accused. We have also minutely examined the testimonies of the witnesses and other documentary evidence so placed on record by the

prosecution. Having done so, we are of the considered view that no case for interference is made out at all. We find that the judgment rendered by

the trial Court is based on complete, correct and proper appreciation of evidence (documentary and ocular) so placed on record. There is neither

any illegality/infirmary nor any perversity with the same, resulting into miscarriage of justice.

8. It is a settled principle of law that acquittal leads to presumption of innocence in favour of an accused. To dislodge the same, onus heavily lies

upon the prosecution. Having considered the material on record, we are of the considered view that prosecution has failed to establish essential

ingredients so required to constitute the charged offence.

9. In *Prandas Vs. The State*, , Constitution Bench of the apex Court, has held as under:

(6) It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no

power under S. 417, Criminal P.C., to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate Court has in some way

or other misdirected itself so as to produce a miscarriage of justice. In our opinion, the true position in regard to the jurisdiction of the High Court

under S. 417, Criminal P.c. in an appeal from an order of acquittal has been stated in- AIR 1934 227 (Privy Council) , in these words:

Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was

founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that

power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions

upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the

credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he

has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a

finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its

conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice.""

10. We find that independent witness Mohar Singh (PW-1) has not supported the prosecution case at all. Despite his extensive cross-examination,

nothing fruitful could be elicited from his testimony.

11. In *State of Rajasthan Vs. Om Prakash*, , the Apex Court held as under:-

14. In *State of H.P. v. Gian Chand* [2000(1) SCC 71] Justice Lahoti speaking for the Bench observed that the Court has first to assess the

trustworthy intention of the evidence adduced and available on record. If the court finds the evidence adduced worthy of being relied on then the

testimony has to be accepted and acted on though there may be other witnesses available who could have been examined but were not examined.

12. It is a settled proposition of law that merely because a witness has turned hostile, his entire evidence cannot be termed to be unworthy of

credence. It is for the Court to consider, whether as a result of contradiction, witness stands fully discredited or part of his testimony can still be

believed. If the credit of a witness is not fully shaken, Court can rely upon that part of the testimony which appears to be creditworthy.

13. It is a settled proposition of law that sole testimony of police official, which if otherwise is reliable, trustworthy, cogent and duly corroborated

by other witnesses or admissible evidence, cannot be discarded only on the ground that he is a police official and may be interested in the success

of the case. It cannot be stated as a rule that a police officer can or cannot be a sole eyewitness in a criminal case. It will always depend upon the

facts of a given case. If the testimony of such a witness is reliable, trustworthy, cogent and if required duly corroborated by other witnesses or

admissible evidences, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some

interest in success of the case. It is only when his interest in the success of the case is motivated by overzealousness to an extent of his involving

innocent people; in that event, no credibility can be attached to the statement of such witness.

14. It is not the law that Police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material

particulars by other independent evidence. The presumption applies as much in favour of a police officer as any other person. There is also no rule

of law which lays down that no conviction can be recorded on the testimony of a police officer even if such evidence is otherwise reliable and

trustworthy. Rule of prudence may require more careful scrutiny of their evidence. If such a presumption is raised against the police officers without

exception, it will be an attitude which could neither do credit to the magistracy nor good to the public, it can only bring down the prestige of police

administration.

15. Wherever, evidence of a police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis

of conviction and absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution case. No

infirmity attaches to the testimony of the police officers merely because they belong to the police force and there is no rule of law or evidence which

lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent

evidence. Such reliable and trustworthy statement can form the basis of conviction.

[See: Govindaraju @ Govinda Vs. State by Sriramapuram P.S. and Another, ; Tika Ram v. State of Madhya Pradesh, (2007) 15 SCC 760; Girja

Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, ; and Aher Raja Khima Vs. The State of Saurashtra,].

16. Apex Court in Tahir Vs. State (Delhi), , dealing with a similar question, held as under:-

6.....In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule

of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless

corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they

can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires

confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality

to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.

17. In view of the aforesaid statement of law, we shall now examine the testimonies of police officials present on the spot.

18. When we examine the testimonies of Shyam Dass (PW. 2), Bala Ram (PW. 11) and Joginder Singh (PW. 13), we find that police officials had

no prior intimation of cultivation of opium poppy in the area. Police had gone on patrol duty, in connection with detection of crime. However, there

is nothing on record to establish the Ravangi (departure) of the police to Galyana, in connection with the same. Genesis of the prosecution story, to

our mind, does not inspire confidence at all.

19. What further needs to be examined is as to whether prosecution has been able to establish, by leading clear, cogent and convincing material,

cultivation of opium poppy by the accused in the fields owned and possessed by him.

20. Joginder Singh states that for ascertaining ownership and possession, he got the demarcation conducted on the spot from the Halqua Patwari.

However, Kuldeep Singh (PW-10) contradicts such version by stating that he did not conduct the demarcation on the spot. His version that the

said Khasra No. 2303 belonged to Mangal Chand alias Manglu is uninspiring in confidence, for he does not know either the adjoining khasra

numbers or the owners thereof. Who called the Patwari, is left to be guessed. Also Patwari admits that Khasra No. 2303 has not been possessed

in an exclusive manner by accused Mangal Chand alias Manglu has not, over which opium was cultivated. Who authorized him to carry out

demarcation is also not clear. Patwari admits that he was not competent officer to have conducted demarcation. Thus, demarcation report not

having been prepared, in accordance with law, cannot be relied upon and taken as a piece of legal evidence. Investigating Officer also did not

enquire as to whether the land was joint or exclusively owned by the accused.

21. We find from the testimony of prosecution witnesses that there were 20 or 30 houses in the village. Who are residents of those houses? Why

were they not associated in the investigation? Why were they not examined in court? has not been explained. Also the version that they were

informed by local residents does not inspire in confidence and why is it that such persons were not either associated during investigation or

examined in Court.

22. Thus, in our considered view, it cannot be said that prosecution has been able to establish, beyond reasonable doubt, the fact that the accused

exclusively owned or possessed the fields, comprising in Khasra No. 2303, over which opium poppy stood cultivated by him. Undisputedly the

land is in joint ownership with persons who are neither the accused nor witnesses.

23. Hence, it cannot be said that prosecution has been able to prove its case, by leading clear, cogent, convincing and reliable piece of evidence so

as to prove that the accused had cultivated opium poppy in the fields, comprising Khasra No. 2303 at Phati Malyani, exclusive owned and/or

possessed by him.

24. For all the aforesaid reasons, we find no reason to interfere with the well reasoned judgment passed by the trial Court. The Court has fully

appreciated the evidence so placed on record by the parties.

25. The accused has had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down by the Apex

Court in Md. Ankoos and Others Vs. The Public Prosecutor, High Court of A.P., , it cannot be said that the Court below has not correctly

appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice. No ground for interference is called for.

The present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged.

Appeal stands disposed of, so also pending application(s), if any.