
State of Himachal Pradesh Vs Roop Singh

Cr. Appeal No. 335 of 2012

Court: High Court of Himachal Pradesh

Date of Decision: July 21, 2016

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) " Section 20(b)(2)(c)

Citation: (2016) 4 CriCC 705 : (2016) CriLJ 3953 : (2017) 1 RCRCriminal 987

Hon'ble Judges: Mr. Rajiv Sharma and Mr. Vivek Singh Thakur, JJ.

Bench: Division Bench

Advocate: Mr. Vikram Thakur, Deputy Advocate General, for the Appellant; Mr. Devender K. Sharma, Advocate, for the Respondent

Final Decision: Allowed

Judgement

Mr. Rajiv Sharma, J. "The State has come in appeal against Judgment dated 21.1.2012 rendered by the learned Sessions Judge (II) Mandi,

HP in Sessions Trial No. 21 of 2011, whereby respondent-accused (hereinafter referred to as "accused" for convenience sake), who was charged

with and tried for offence under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as "Act" for

convenience sake), has been acquitted by the learned trial Court.

2. Prosecution case, in a nutshell, is that ASI Ram Lal (PW-11), LHC Narpat (PW-1), Dhameshwar (PW-10) and Constable Jatinder Kumar

were present near Garagushaini to Khauli road on 8.12.2010 in the official vehicle bearing registration No. HP-07-A-0282. Accused came from

Khauli at about 8 AM on foot. He was carrying a backpack (Ext. P2). He tried to flee. He was overpowered. Place was lonely and deserted. No

person crossed the road. Hence, LHC Narpat and Constable Jatinder Kumar were associated as witnesses. Backpack was searched. It

contained stick like substance (Ext. P4). It was found to be Charas. It weighed 15 kg. Charas was put back in the same polythene and polythene

was put in the backpack. Backpack was sealed with 24 impressions of seal $\tilde{A} \hat{A} \hat{A} \frac{1}{2} R \tilde{A} \hat{A} \hat{A} \frac{1}{2}$. Seal impression was taken on separate pieces of cloths.

NCB-1 form in triplicate was filled on the spot. Seal impression was taken on form NCB-1 and seal was handed over to Narpat after use.

Contraband was seized vide seizure memo Ext. PW-1/C. Rukka Ext. PW-11/A was prepared and was handed over to Constable Dhameshwar

with the direction to carry it to Police Station, Aut. Constable Dhameshwar handed over Rukka to MHC Khem Chand (PW-4), who recorded

FIR Ext. PW-4/A. ASI Ram Lal prepared site plan Ext. PW-11/B. Case property was produced before HC Khem Chand, who resealed the

parcel with six impressions of seal $\tilde{A} \hat{A} \hat{A} \frac{1}{2} A \tilde{A} \hat{A} \hat{A} \frac{1}{2}$. He deposited the case property with the Malkhana and made entry in the register of Malkhana at Sr.

No. 545, copy of which is Ext. PW-4/E. Case property was sent to FSL Junga on 9.12.2010 vide RC No. 95/2010 (Ext. PW-4/F) through

Uday Chand. Investigation was completed. Challan was put in the Court after completing all the codal formalities.

3. Prosecution has examined as many as twelve witnesses to prove its case against the accused. Accused was also examined under Section 313

CrPC. Five witnesses were also examined by the accused in his defence. He pleaded innocence. Accused was acquitted as noticed above. Hence,

this appeal by the State.

4. Mr. Vikram Thakur, Deputy Advocate General, has vehemently argued that the prosecution has proved its case against the accused.

5. Mr. Devender K. Sharma, Advocate, has supported Judgment dated 21.1.2012.

6. We have heard the learned counsel for the parties and also gone through the Judgment and record carefully.

7. LHC Narpat Ram (PW-1) testified that he along with ASI Ram Lal, Constable Jatinder Kumar and Constable Dhameshwar Singh was present

at Garagushaini to Khauli road on 8.12.2010 in official vehicle No. HP-07-282. Accused came from Khauli at 8 AM. He was carrying a

backpack. He tried to flee. He was overpowered. Place was lonely and deserted. No independent person or vehicle crossed them. He and

Constable Jatinder Kumar were associated as witnesses. Backpack was searched. It contained stick like substance. It was found to be Charas. It

weighed 15 kg. Charas was put in the bag. Bag was put in the backpack and backpack was wrapped in a piece of cloth. Cloth parcel was sealed

with 24 impressions of seal $\tilde{A} \hat{A} \hat{A} \frac{1}{2} R \tilde{A} \hat{A} \hat{A} \frac{1}{2}$. Seal impression was taken on separate pieces of cloths. In his cross-examination, he has deposed that they

went to Karsog from PP Pandoh. They did not visit Police Station, Karsog on that day. He did not remember where they stayed during the night

but they stayed in a private guest house. He did not remember whether they stayed near bus stand or in the main bazaar. He did not remember the

time of their departure from Karsog but they went in the morning. They had set up Naka on the way to Banjar. They reached at Bali Chowki at 1

AM in the intervening night of 7th and 8th. He admitted that there were 50-70 houses and shops at Garagushaini. They had set up Naka at a

distance of 500 metres towards Khauli. Rest house was on the other side of bridge in District Kullu. Road from Jhibi goes uphill towards Khauli

via Garagushaini Bazaar. He did not remember if any person or vehicle crossed them. He did not know whether there was a Senior Secondary

School at Garagushaini. Rukka was written by Constable Jatinder.

8. HC Khem Chand (PW-4) deposed that he was posted as MHC in Police Station Aut since May 2010. Constable Dhameshwar brought one

Rukka mark A to the Police Station on 8.12.2010 at 1 PM. He recorded the FIR Ext. PW-4/A. He was discharging duties of SHO on that day

since SHO was on leave and ASI Shri Ram had gone to attend crime meeting. ASI Ram Lal handed over one parcel Ext. P1 which was sealed

with 24 impressions of seal $\tilde{\Delta}\tilde{\Delta}^{\frac{1}{2}}R\tilde{\Delta}\tilde{\Delta}^{\frac{1}{2}}$, NCB-1 form in triplicate, on the same day at 4 PM. He resealed the parcel with six impressions of seal

$\tilde{\Delta}\tilde{\Delta}^{\frac{1}{2}}A\tilde{\Delta}\tilde{\Delta}^{\frac{1}{2}}$. Sample seal was taken on separate pieces of cloth. One such impression was Ext. PW-4/B. He prepared resealing certificate Ext. PW-

4/C. He filled in relevant columns of NCB-1 form Ext. PW-4/D and deposited all these articles in the Malkhana. He made entry in the Malkhana

register at Sr. No. 545. He sent all the articles to FSL Junga on 9.12.2010 through HHC Uday Chand vide RC No. 95/10. He handed over

receipt to him on his return.

9. Constable Rajnish Kumar has brought case property Ext. P-1 and result of analysis from FSL Junga and handed over to MHC Khem Chand.

10. Constable Dhameshwar (PW-10) deposed the manner in which accused was apprehended, search, seizure and sampling proceedings were

completed on the spot. Rukka mark A was prepared, which was handed over to him with the direction to carry it to the Police Station. He handed

over the Rukka to MHC Khem Chand. He admitted in his cross-examination there were houses at Garagushaini but he could not tell the number

of shops or houses. Naka was set up at a distance of 500 metres from Garagushaini towards Khauli road. He did not remember that there was

PHC and one Khadi Bhawan located at a distance of 500 metres from Garagushaini. Rukka was handed over to him at 9.45 AM. He was coming

on foot. He took lift in a jeep to Bali Chowki. He went in bus thereafter.

11. ASI Ram Lal (PW-11) deposed the manner in which accused was intercepted. Search, seizure and sampling proceedings were completed at

the spot. he filled in NCB-1 form and seizure memo. He prepared Rukka. It was sent to the Police Station. In his cross-examination, he denied

that there were 70- 80 shops and houses at Garagushaini. He denied the suggestion that description of road has been wrongly given in the site

plan. Banjar was towards North side. Volunteered that he had indicated Banjar by an arrow. There were no houses or shops on the Khauli road.

They started from the spot at 12.30 PM. No person crossed them. He did not know that there were large villages at a distance of about 2 kms

from the spot. Rukka was in the handwriting of Jatinder Kumar. ASI Ram Lal was also recalled for further examination on 24.11.2011.

12. Durga Singh (DW-2) deposed that the road to Garagushaini started from Jhibi. It diverts from Banjar Ani road. It leads upto Khauli. Khauli

was at a distance of 5 kms from Garagushaini. Khauli was towards the Western side and Jhibi was towards Eastern side from Garagushaini. There

was a Khud separating two districts. Road from Garagushaini to Khauli was straight and adjacent to the Khud. There were buildings of PHC and

Khadi Gramodyog Bhawan at a distance of 500 metres from Garagushaini. There was a 10+2 school in Garagushaini. There were many houses on

Khauli road. Garagushaini was business centre. In his cross-examination, he has admitted that accused belonged to his Panchayat. He also

admitted in his cross-examination that it was a hilly terrain and road was carved out of the hill. He has not made inquiry from the police why

accused was being taken.

13. Rajinder Kumar (DW-3) deposed that he was posted as a Supervisor in Garagushaini road. Road from Garagushaini to Khauli was straight

and adjacent to Khud. Distance between Garagushaini and Khauli was 5 kms. There were 80-90 houses on both sides of road on Garagushaini

starting from bridge extending to a distance of 500-600 metres. There were buildings of PHC and Khadi Gramodyog Bhawan after that. He

further admitted in his cross-examination that there was a jungle adjacent to the road. Road was along with Nallah. It was at a distance of 20 feet

from Nallah. He admitted that road was in hilly terrain but there was plain area after the Nallah.

14. Roop Chand (DW-4) deposed that he was posted as a Chowkidar in HPPWD rest house for 2-3 years. He was present in the rest house on

7.12.2010 at 7 PM. Two vehicles came to rest house. There were 8 persons in the vehicles. They demanded room. He allotted room No. 2.

Some were police officials. Some left and some remained in the rest house. They returned at 9 PM. Accused was in the vehicle. He got the entry

recorded regarding their arrival and when they were leaving. In his cross-examination, he has admitted that there was no facility of providing food

in the rest house. He admitted there were double beds in every room and there was facility of staying for two persons in one room. He admitted

that entry was not made by him. He also admitted that entry regarding arrival and departure is made in the register at the time of arrival. One

person was also appointed as Chowkidar in the rest house besides him. He admitted that entries are verified by the Assistant Engineer. He has not

pointed out absence of entry regarding departure. He has also admitted that the person staying in the rest house makes entry regarding his stay.

15. Megh Singh (DW-5) deposed that rest house was situate about 600 metres from Garagushaini rest house. He was at his home at about 8.30-

8.45 PM on 7.12.2010. His son was with him. One person came and told his son that he had some work with him and called him outside. When

his son went outside, he did not return. There was some noise. There was one person in Khaki uniform and three were in civil uniform. Person in

uniform had a pistol. They forcibly put his son in the vehicle. They took his son towards Banjar. He ran after them. He went to Durga Singh,

Pradhan Garagushaini. He narrated the incident to him.

16. Case of the prosecution, precisely, is that accused was apprehended on 8.12.2010 at 8 AM. He was carrying a backpack. Backpack was

searched. It contained Charas. It weighed 15 kg. Charas was produced before MHC Khem Chand. He deposited the same in Malkhana. It was

sent to FSL Junga on 9.12.2010 through HHC Uday Chand. Learned trial Court has discarded the site plan on a very flimsy ground. Site plan has

not been prepared by an expert. PW-11 Ram Lal has only shown general directions of the road. Accused was apprehended while carrying a huge

quantity of contraband. It has come on the record that the independent witnesses were not available. Statements of official witnesses inspire

confidence and are trustworthy. There was no reason for the learned trial Court to discard the statements of the official witnesses about the manner

in which accused was found carrying contraband. Witnesses are not supposed to narrate the facts in a parrot-like manner. Minor contradictions

about the place from where accused was apprehended and whether buildings were existing and shops were at a short distance, were not sufficient

to acquit the accused.

17. Statement of DW-4 Roop Chand does not inspire confidence. According to him, two vehicles had come. Eight persons had come in the

vehicle. They should have booked at least four room and not one room. He has not made entry in his handwriting. There is no entry regarding the

departure. Similarly, DW-2 Durga Singh in his cross-examination admitted that accused belonged to his Panchayat. He did not remember the

registration number of the vehicle. Other ground taken by the learned trial Court for acquitting the accused is that official log book of the vehicle

was not produced. It was not necessary for the police to prove the log book. Accused could also get the same produced by moving appropriate

application before the learned trial Court. Statement of DW-4 Roop Chand that the accused was in the vehicle on 7.12.2010 does not inspire

confidence, if his statement is analysed critically.

18. Prosecution has proved its case against the accused beyond all reasonable doubt.

19. Accordingly, the appeal is allowed. Judgment dated 21.1.2012 rendered by the learned Sessions Judge (II) Mandi, HP in Sessions Trial No.

21 of 2011 is set aside. The accused is convicted for the commission of offence punishable under Section 20(b) (ii)(C) of the Act. Accused be

produced to be heard on quantum of sentence on 28.7.2016. Bail bonds of the accused are cancelled.

20. Registry is directed to prepare and send the production warrant to the quarter concerned.