

The State of M.P. Vs. Umashankar

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Court : Madhya Pradesh

Decided On : Aug-13-2012

Appellant : The State of M.P.

Respondent : Umashankar

Advocate for Def. : Shri. Ramesh Tamrakar

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH :
HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Appeal No.1105/1998 State of
Madhya Pradesh VERSUS Umashanker
----- Shri S.K.Kashyap, Public
Prosecutor for the State/ respondent. Shri Ramesh Tamrakar, counsel for the
respondents. -----

JUDGMENT

(Delivered on the 13th day of August, 2012) The State has preferred this appeal against the judgment dated 11.2.1994 passed by learned Sessions Judge, Narsinghpur in Special case No.93/1993 whereby the respondent was acquitted from the charge of offence punishable under section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. Prosecution's case, in short, is that, on 6.11.1993, Shri R.R.Dubey (P.W.4) the then SHO of Police Station Suatala was on road patrol. He got the intimation that the respondent Umashanker was transporting some Ganja and therefore, near a petrol pump, the respondent was detained who was coming from Rajmarg square. He was given an :- 2 :- Criminal Appeal No.1105 of 1998 opportunity, so that he could get his search by a Gazetted officer or the Magistrate. With his consent, Shri Dubey took his search. In a bag carried by the respondent, 1.300 kgs of Ganja was found and a sum of Rs.18.50/- was also found. All such property was seized by Shri Dubey and he prepared a seizure memo, Ex.P/1. Seized property was duly sealed. Property was sent to the Excise Sub Inspector Shri K.K.Singh (P.W.5) for its examination. Shri Singh found it to be a mixed sample of Ganja and Bhang. Thereafter, sealed property was sent for its analysis to the Forensic Science Laboratory, Sagar from where it was informed that the substance seized from the appellant was Ganja and therefore, a charge-sheet was submitted before the Sessions Judge/Special Judge under NDPS Act, Narsinghpur.

3. The respondent abjured his guilt. He did not take any specified plea but, he has stated that he was a contractor of Bhang and he was falsely implicated in the matter. No defence evidence was adduced.

4. After considering the prosecution's evidence, learned Sessions Judge/Special Judge, Narsinghpur has acquitted the respondent from the charge of the offence under section 20 of NDPS Act.

5. I have heard the learned counsel for the parties. :- 3 :- Criminal Appeal No.1105 o

6. The learned Panel Lawyer has submitted that it was well established that the property seized from the appellant was Ganja. The testimony of Shri Dubey could not be disbelieved and therefore, the respondent was to be convicted for the offence. It is prayed that the appeal may be allowed and the respondent may be convicted and sentenced accordingly.

7. On the other hand the learned counsel for the respondent has submitted that the trial Court has acquitted the respondent on the basis of the procedure adopted

by Shri Dubey, the then SHO of Police Station Suatala. He handled the case in a haphazard manner. His testimony is not at all confirmed by his own companion Shri Narayan Prasad Tiwari, a home-guard. No impression of seal was given on the seizure memo. No samples were taken separately. The entire property was sent to the Excise Sub Inspector. It is nowhere mentioned by the Forensic Science Laboratory that whether he found the seal of the police station or the Excise Sub Inspector. The specimen of the seal sent to the Forensic Science Laboratory was not produced before the trial Court. Under such circumstances, it was nowhere established that the report received from Forensic Science Laboratory was for the substance seized :- 4 :- Criminal Appeal No.1105 of 1998 from the respondent and therefore, acquittal directed by the trial Court appears to be correct.

8. After considering the submissions made by the learned counsel for the parties and looking to the prosecution evidence, it is to be considered that as to whether the appeal may be accepted?. And if yes, then, what would be the sentence against the respondent?.

9. Shri R.R.Dubey (P.W.4) has stated that he seized 1.300 kgs of Ganja from the respondent and prepared a seizure memo Ex.P/1. On the contrary, independent witnesses Ramesh Datt Dubey (P.W.1), Sukhram (P.W.2) and Narayan Prasad Tiwari (P.W.3) were turned hostile. Shri Dubey has stated that the respondent was detained near a petrol pump. He was coming from the side of Rajmarg square. He was given an opportunity that his search may be taken by a Gazetted officer or by the Magistrate and he has shown that the consent letter Ex.P/5 given by the respondent. However, his companion Narayan Prasad Tiwari (P.W.3), a home-guard has stated that the respondent was taken to the police station by a bus and at the police station, the search of the respondent was taken. There is a material contradiction between the evidence of Shri R.R.Dubey and Narayan Prasad Tiwari. Under such circumstances, it is highly doubtful that at what place, the respondent was :- 5 :- Criminal Appeal No.1105 of 1998 found and whether he had any contraband substance at the time of his search or not.

10. Similarly, Shri Dubey adopted a method of his own discretion about the seizure of the property. He was expected to take two samples from the seized property and those samples could be sent to the Forensic Science Laboratory and to the Excise Sub Inspector. He did not take any sample from the seized property. On the contrary, he sent the entire seized property to the Excise Sub Inspector Shri K.K.Singh. Shri K.K.Singh (P.W.5) has given his report Ex.P/11 in which he has mentioned that he found the entire substance in a cotton bag in a sealed position and by his experience, he gave an opinion that it was a mixed sample of Bhang and Ganja. According to the report, Ex.P/11, sample was returned after sealing done by the Excise Sub Inspector. However, neither in seizure memo Ex.P/1 nor on the report Ex.P/11, it was mentioned that the sample of impression of concerned seal was given. It was expected from the SHO Shri Dubey that the sample of the seal should be affixed on seizure memo, Ex.P/1, so that the Excise Sub Inspector could say in his report that sample was found sealed with a particular seal. Similarly, it was for the Excise Sub Inspector to give the impression of seal on Ex.P/11, so that it could be ascertained that the sample was sealed and it was :- 6 :- Criminal Appeal No.1105 of 1998 reached to the Forensic Science Laboratory in a sealed position having the seal of Excise Sub Inspector.

11. The property was alleged to be seized on 6.11.1993, whereas it was sent to the Excise Sub Inspector on 30.11.1993. There was no reason shown by Shri Dubey as to why the sample was kept in a police station for such a long period. Thereafter, sample was sent to the Forensic Science Laboratory on 6.12.1993. Copy of the letter sent by S.P., Narsinghpur to the Forensic Science Laboratory was not submitted before the trial Court and therefore, it is nowhere mentioned that what was the sample of the seal by which the contraband substance was sealed and sent to the Forensic Science Laboratory. No any proof of that impression of the seal was submitted before the trial Court. After considering the report, Ex.P/11, the sample must have been sealed with the seal of Excise Sub Inspector but, in the report of Forensic Science Laboratory, Ex.P/12, it is nowhere mentioned that the sample was sealed by a seal of Excise Sub Inspector. Under such circumstances, dealing with the property is doubtful. The learned Sessions Judge has rightly held that it is nowhere proved that the property seized from the appellant was sent to the Forensic Science Laboratory. Report given by the Excise

Sub Inspector is not specific. By physical examination, it could not be said that it :-
7 :- Criminal Appeal No.1105 of 1998 was a sample of Ganja or the sample of Bhang. Under such circumstances, looking to the testimony of Shri R.R.Dubey, the prosecution could neither prove that any substance was seized from the respondent nor that seized article was found to be a contraband substance Ganja. Under such circumstances, trial Court has rightly acquitted the appellant from the charge of offence punishable under section 20 (b) of the NDPS Act.

12. On the basis of the aforesaid discussion, appeal filed by the State has no force. There is no basis by which appeal can be accepted. Consequently, the appeal filed by the State is hereby dismissed, maintaining the conclusions drawn by the trial Court.

13. Copy of the judgment be sent to the trial Court with its record for the information. (N.K.GUPTA) JUDGE 13 8/2012 Pushpendra :- 8 :- Criminal Appeal No.1105 o

16. Defence witness Janardhan Prasad (D.W.1) has stated that there was a status quo granted by the civil Court relating to that house and therefore, the complainant could not construct that house in that land. He has also submitted that the complainant Bina Singh had already lodged one case of theft against the respondent Bijendra. When he went to the spot he found no change at the spot and therefore, he claimed that a total false case was created by the complainant. Nearby that alleged constructed house. Except Bahadur, no one's presence was shown by the complainant at the time of incident. Under such circumstances, there is no substantial evidence to show that the respondents were the persons who knocked down that unconstructed Ausari. Defence witness Janardhan Prasad (D.W.1) has stated that there was a status quo granted by the civil Court relating to that house and therefore the complainant could not construct that house in that land. He has also submitted that the complainant Bina had already lodged one case of theft against the respondent Bijendra. When he went to the spot on the next day. He found no change at the spot.

17. Defence witness Janardhan Prasad (D.W.1) has stated that there was a status quo granted by the civil Court :- 9 :- Criminal Appeal No.1105 of 1998 relating to

that house and therefore, the complainant could not construct that house in that land. He has also submitted that the complainant Bina Singh had already lodged one case of theft against the respondent Bijendra. When he went to the spot he found no change at the spot and therefore, he claimed that a total false case was created by the complainant

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