

Mool Chand Yadav Vs. State

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Court : Delhi

Decided On : Sep-27-2013

Judge : S. P. Garg

Appellant : Mool Chand Yadav

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON : July 04, 2013 DECIDED ON : September 27, 2013 + CRL.A.183/2012 & Crl.M.B.Nos.633/2013 & 893/2013 MOOL CHAND YADAV Through : Appellant Mr.Vikas Jain, Advocate. versus STATE Through : Respondent Mr.M.N.Dudeja, APP for the State. Insp.Kuldeep Singh, PS Crime & Railway. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Mool Chand Yadav (the appellant) challenges conviction in Sessions Case No.05/02/2009 arising out of FIR No.20/2008 registered at Police Station Crime Branch whereby he was held guilty for committing offence punishable under Section 18 (c) NDPS Act by a judgment dated 30.11.2011. By an order dated 16.12.2011 he was awarded Rigorous Imprisonment for ten years with fine `1,00,000/-.

2. Allegations against the appellant were that on 11.11.2008 at about 10.30 A.M. near DSOI Club, Dhaula Kuan, New Delhi, he was found in possession of 20kg of

opium in contravention of provisions of NDPS Act. The prosecution examined 12 witnesses to establish appellants guilt. In his 313 statement, he pleaded false implication and examined eight witnesses - Saradara Ram (DW-1), Vikram (DW-2), Dharam Chand (DW-3), Naresh Chand (DW-4), HC Onkar Singh (DW5), HC Ishwar Singh (DW-6), Const.Surender (DW-7) and Inspector Chand Mal (DW-8) in defence. On appreciating the evidence and after considering the rival contentions of the parties, the trial court, by the impugned judgment, held Mool Chand Yadav perpetrator of the crime and sentenced him as mentioned above. Being aggrieved, the appellant has preferred the appeal.

3. Prosecutions case is that on 10.11.2008 at about 09.00 A.M. secret information was received by SI Kuldeep Singh that Mool Chand and Udey Bhan, R/o village Behror (Rajasthan), well connected with local police/administration would come to Delhi in a day or two to deliver a consignment of opium. He conveyed the secret information to Insp.Akshay Kumar, SHO Crime Branch and Shri Sanjay Tyagi, ACP and produced the secret informer before them. SI Kuldeep Singh and SI Rajpal Singh were directed to develop the information in Rajasthan and Delhi respectively. On 11.11.2008, SI Rajpal Singh received a secret information that Mool Chand and Udey Bhan would come in between 10.00A.M. to 11.00A.M.for supply of consignment of opium near Bus Stand, Dhaula Kuan. After completing mandatory formalities, a raiding team was formed and left Crime Branch office along with the informer in official vehicle (TATA 407 No.DL-ILG-0798 driven by Ct.Surinder. On the way, SI Rajpal requested three individuals standing near Safdarjung Hospital and STD/PCO attendant and three author rickshaw drivers at Dhaula Kuan to join the raiding party but none of them obliged and expressed inability for various reasons. After briefing the staff, a nakabandi was organized. At about 10.30 A.M.. Mool Chand was seen coming from bus stand towards Ring Road with a plastic container in his right hand. On checking, it was found to contain 20 kg opium. After completing the formalities, a complaint was sent to Duty Officer, Police Station, Crime Branch through HC Pramod Kumar for registration of the case. The case property was sent to SHO in compliance of Section 55 NDPS Act. Further case of the prosecution is that investigation of this case was assigned to SI Kuldeep Singh who went to the spot. independent public witness Subhash joined the investigation. Crl.A.No.183/2012 An investigating officer recorded

statements of HC Laxman Parsad and Subhash under Section 161 Cr.P.C. The appellant was interrogated and arrested. In his personal search, cash `150/-, a wrist watch and a pink colour bus ticket from Behror to Delhi was recovered and seized. During the course of investigation, the case property was sent for analysis to FSL. The Investigating Officer recorded the statements of witnesses conversant with the facts and after completion of investigation submitted a chargesheet against the appellant in the court.

4. The crucial and moot point to be ascertained is whether opium was recovered from appellants possession in the manner as claimed by the prosecution on 11.11.2008 at about 10.30 A.M. The prosecution was to prove beyond reasonable doubt that Mool Chand Yadav was present with the contraband at the place of arrest on 11.11.2008 at 10.30 A.M. The secret information with Crime Branch on 10.11.2008 was that Mool Chand and Udey Bhan would visit Delhi in a day or two to supply consignment of opium. It is unclear as to, to whom the opium was to be supplied and if so at which place. No investigation was conducted as to with whom the appellant used to remain in contact for the supply of huge quantity of contraband. The source from where the contraband used to be arranged or procured was not investigated. At the time of apprehension of the accused on 11.11.2008 at 10.30 A.M., no independent public witness was associated. It is not clear as to which place/destination the appellant was proceeding on foot after alighting from the bus to supply opium. No individual came near the place of apprehension to collect the consignment. No incriminating document was found in the appellants possession. The secret information turned wrong as Udey Bhan did not accompany the appellant to hand over the consignment. The ticket (Ex.PW11/D) allegedly recovered in the personal search of the appellant showed that he travelled from Behror to Delhi in a bus and it was meant for two individuals/passengers. The Investigating Officer did not verify if the appellant along with other individual had travelled from Behror to Delhi in a particular bus. The driver, conductor and other passengers in the bus were not examined. It was not ascertained as to at what time the two passengers had travelled on the ticket (Ex.PW-11/D) on 11.11.2008. The Investigating Officer did not seek police remand to investigate if Udey Bhan had travelled with the appellant in the said bus or where he had disappeared after arriving at the bus stand. No attempt was made to

find out his whereabouts and the IO did not initiate any proceeding against him for his alleged involvement. Mool Chand Yadav was seen coming alone on foot towards Ring Road from the bus stand. It is not explained as to why no police official was deputed at the bus stand to apprehend the suspects soon after they alighted from the bus. It was not certain that Mool Chand Yadav would come on foot towards Ring Road with the container and would not go towards other direction.

5. On 11.11.2008 after getting information of Mool Chand Yadavs abduction in a Swift car of silver colour from village Sherpur about 10.00 or 10.30 A.M., the police of P.S. Behror, went to Vikrams house. DW-2 Vikram in his Court statement deposed that Deputy S.P. made telephone calls from his house to intercept the said vehicle i.e. DL 5121. DW-6 (HC Ishwar Singh) proved DD No.480 (Ex.DW-6/A) recorded by him on 11.11.2008 at about 11.00 A.M. on the basis of information received from an individual of village Sherpur informing that Mool Chand Yadav S/o Prabhati Lal had been taken towards Delhi by some person in a silver Swift vehicle whose number could be seen only as DL 5121. He further recorded DD No.486 (Ex. DW6/B) at 02.10. P.M. regarding arrival of SHO Inspector Chand Mal along with his staff to the Police Station after investigation of DD No.480. Crucial testimony is that of DW-8 Insp.Chand Mal, SHO PS Behror, District Alwar (Rajasthan). He deposed that at 11.00 A.M., on getting information vide DD No.480 (Ex.DW-6/A) about Mool Chand Yadavs abduction in a Swift Car bearing Registration No.DL5121, he left for village Sherpur and flashed wireless messages to intercept the Swift car. He went to Mool Chands house at Sherpur after apprising Deputy S.P., Behror about the information and he also reached there. The family members disclosed about the visit of one Mukesh on 10.11.2008 who stayed overnight in the house. Next morning on 11.11.2008 after taking tea and meal, Mukesh left along with Mool Chand towards NH-8 from where Mool Chand was removed in a Swift car. He further deposed that Dy.SP Behror, requested senior officers, Gurgaon on phone to intercept the Swift car. After some time he was informed regarding interception of the vehicle at Toll Plaza at Khirki Daula by SHO PS Khirki Daula. In the conversation with SHO, he informed that SI Kuldeep Singh from Crime Branch along with staff were present with Mool Chand in the said car. When he spoke to SI Kuldeep Singh (Crime Branch), he disclosed

that Mool Chand was being taken by him for inquiry as he was involved in the supply of opium and cases were registered against him earlier also. SI Kuldeep Singh gave him his mobile and official number to contact him in future. After conveying the information to family members of Mool Chand Yadav and villagers, he recorded all these facts in DD No.486 (Ex.DW6/B). SI Kuldeep Singh's visit to village Sherpur on 11.11.2008 in Maruti (Swift) Car DL 5121 is not disputed. It is pertinent to note that the driver of the said vehicle was not examined. DW-4 (Naresh Chand) from Delhi Transport Authority, Janak Puri revealed that this was a number of Maruti Gypsy which was registered in the name of Commandant Group Centre, CPRF, Jharoda Kalan, New Delhi. The registration number of the vehicle apparently was fake. There is no proof if any fare was paid to the driver for the use of the vehicle that day. The purpose to visit Kotputli and Behror (Rajasthan) has not been established beyond doubt. There was no plausible reason for SI Kuldeep Singh to visit such place on 11.11.2008 to develop the secret information received on 10.11.2008 when Mool Chand Yadav and Uday Bhan were expected to visit Delhi in a day or two to supply opium. It is claimed that SI Kuldeep Singh, HC Suresh, HC Rajbir Singh and Const. Anand Pal left in a private taxi for Kotputli and Behror to verify and develop the secret information and to conduct investigation of case FIR No.463/2007 registered at Police Station Keshav Puram and DD No.9 (Ex.PW-11/A) was recorded in this regard. The police team returned at about 02.15 P.M. and DD No.6 (Ex.PW-11/B) was recorded. There are divergent versions in the testimony of prosecution witnesses as to the time when this team left to Kotputli or whether the secret informer had accompanied them or he had left a day prior to that. SI Kuldeep Singh did not reveal the places visited by him. It is not clear as to what investigation was carried out in FIR No.463/2007 registered at Police Station Keshav Puram and what steps were taken to develop the secret information. Apparently, they did not visit and record the entry in the local police stations and did not raid any specific place during their visit. They even did not go to the residence of the appellant or Uday Bhan to ascertain their whereabouts or to find out any contraband stored in the house. No information was collected about Uday Bhan and his whereabouts. Admittedly, on way back to Delhi, Swift Car No.DL 5121 was intercepted and checked at Toll Plaza, Khirki Daula by Haryana Police. SI Kuldeep Singh admitted

in the cross-examination that on 11.11.2008 he had a talk with SHO and DSP Behror on the mobile phone of SHO PS Khirki Daula, Gurgaon. He further admitted that at 10.50 A.M. when he was present on the outskirts of village Sherpur, he received information from a secret informer about the apprehension of accused Mool Chand. Secret informer had met him personally there.

6. SI Kuldeep Singh in DD No.6 (Ex.PW-11/B) recorded that when they went to village Sherpur at 10.50 A.M. from Kotputli, secret informer informed him about apprehension of Mool Chand Yadav with consignment of opium at Delhi and escape of Udey Bhan. Vikram, the appellants son, was instigating the villagers against him due to the enquiry conducted by him. He further recorded that around 12.15 P.M. at Khirki Daula, their vehicle was intercepted and SHO Khirki Daula informed him that they had a message from SHO and DSP, Behror about kidnapping of Mool Chand from Behror who was being taken to Delhi. The vehicle was searched but Mool Chand Yadav was not found therein. The facts mentioned in DD No.6 (Ex.PW11/B) remained unproved or established. Constable Anand Pal was examined as PW-7, to prove that on 15.12.2008 he had taken pulandas to deposit in the office of FSL, Rohini. He did not depose about his visit to Kotputli and Behror on 11.11.2008 with SI Kuldeep Singh. In answer to a Court question in the cross-examination, he admitted that on 11.11.2008, he had accompanied SI Kuldeep and others in a private taxi to Kotputli to arrest Krishan Pal @ Fauji. He was unable to tell the exact places where they had gone in Kotputli. He contradicted SI Kuldeep Singh and disclosed that the secret informer had informed about Mool Chands arrest at 11.30 or 12.00 noon. SI Kuldeep Singh did not explain how Vikram came to know about his visit to Sherpur when he had not taken assistance of the local police and did not visit his residence. No other member of the team was examined to prove the specific purpose to visit to Sherpur. There is no evidence whatsoever as to what investigation was carried out at Kotputli or Sherpur. There were no compelling reasons to return to Delhi at 02.15 P.M. on the same day without positive results and to take over the investigation of this case immediately.

7. Presence of PW-6 (Subhash Kumar) a chance witness at the spot is highly doubtful as he did not support the prosecution in its entirety and resiled from the

previous statement under Section 161 Cr.P.C. He identified Mool Chand to be an individual who was detained by the police and from whose pocket some cash and ticket were recovered. He admitted that he had put signatures on three papers without going through its contents. He was not informed about recovery of 20 kg opium from the appellant and source from where it was procured. PW-6 (Subhash Kumar) cannot be considered an independent public witness as he had acquaintance with SI Kuldeep Singh. He revealed that he was asked by SI Kuldeep on mobile to reach the court. He met him outside the court and was asked to identify the accused who was outside the court. In the cross-examination, he introduced a new version that when he went to the spot on his motor cycle, the accused was sitting in TATA 407 and the proceedings were conducted therein. None of the prosecution witnesses disclosed the arrival of this witness on motorcycle and its number. SI Kuldeep Singh in the cross-examination admitted about the casual visits of PW-6 (Subhash Kumar) to his office once or twice after 11.11.2008 and having conversation with him on telephone once or twice. No implicit reliance can be placed on the testimony of PW-6 (Subhash Kumar) in whose presence the contraband was not recovered.

8. On Vikrams complaint under Section 156 (3) Cr.P.C., case FIR No.114/2009 was registered at Police Station, Behror. He fairly admitted that cancellation report was filed and he has lodged protest petition. The cancellation report (Ex.DW2/PB) was filed as the police officials of PS Khirki Daula did not find Mool Chand in the vehicle. Since the witnesses from Police Station, Khirki Daula were not examined in this case, their deposition in the said proceedings cannot be commented. The fact remains that DW-8 (Insp.Chand Mal) came to know after having a conversation with SHO Khirki Daula that they had intercepted vehicle No.DL4CB 5121 and SI Kuldeep Singh from Crime Branch along with staff was present with Mool Chand in the said car. SHO Khirki Daula made him to speak to SI Kuldeep Singh who informed him that Mool Chand was involved in the supply of opium and he was 8 to make false statement in the court. There are no good reasons to discard or disbelieve the official witness holding a responsible job as SHO Behror. All these facts were also within the knowledge of concerned Deputy SP. DD entries recorded at Police Station, Crime Branch were mainly on the basis of information given by SI Kuldeep Singh and were attested by senior officers.

Appellants counsel drew attention to entries in register No.19 on 11.11.2008 regarding deposit of case property (Ex.PW-3/A, 3/B and 3/C) and (Ex.PW-3/D/1) which are at variance. Corrections were made in Ex.PW-3/A & 3/C. PW-3 (HC Chand Ram), admitted that there were cuttings in Ex.PW-3/C and not in Ex.PW-3/D1. He further admitted that he had wrongly written the name of SI Rajpal, as the first Investigating Officer at entry No.32 in Register No.19 instead of SHO and thereafter made the correction in the register after 5/7 days of deposit of the case property at the instance of SHO without written directions. The corrections were neither signed by the SHO nor he put his signatures or date at the time of making corrections. There is no entry in Ex.PW-3/D-1 regarding deposit of FSL form on 11.11.2008 and no entry on 10.12.2008 and 15.12.2008 regarding sending of CFSL form with parcel to CFSL. Again there is no entry when CFSL form was deposited after refusal on 10.12.2008. CrI.A.No.183/2012 Road certificate (Ex.PW3/B-1) dated Page 13 o

10. 12.2008 does not record that FSL form was sent along with parcel. There are corrections/additions in exhibits Ex.PW-3/A and Ex.PW-3/C to show entry of CFSL form along with case property and sending it with parcel on 10.12.2008 and 15.12.2008. Ex.PW3/D-1 showed the name of depositor of the case property as SI Raj Pal Singh. In Ex.PW-3/A, the name of Akshay Kumar (SHO) as depositor was added. Appellants counsel pointed out that as per the testimony of PW-4, mouth of polythene containing samples was tied with rubber band. PWs 5 and 9 deposed differently and stated that it was tied with a piece of cloth. Call details were not placed on record though SI Kuldeep Singh had calls on his mobile No.9810756351 on 10.11.2008 and 11.11.2008 from mobile No.9210853451 allegedly belonging to Mukesh and mobile Nos. 9214152627 and 9610562414 of Mool Chand. Certified copies of call details were, however, filed in the court at Behror, Rajasthan. There are serious inconsistencies whether on 30.10.2010 PW-6 (Subhash Kumar) appeared suo motto to give statement in the court or was called by SI Kuldeep. PW-11 (SI Kuldeep Singh) denied to have made any telephone call to PW-6 Subhash Kumar to summon him in the court.

9. Burden to prove the case beyond reasonable doubt was upon the prosecution. The provisions of the Act and the punishment prescribed therein being

indisputably stringent, the extent of burden to prove the foundational facts on the prosecution i.e. proof beyond all reasonable doubt would be more onerous. A heightened scrutiny test would be necessary to be invoked. It is a well settled principle of criminal jurisdiction that more serious the offence, the stricter is the degree of proof. Defence witnesses have to be given weightage at par with that of the prosecution witnesses. Testimony of police officials from Behror, Rajasthan causes dent in the prosecution case about his apprehension and arrest with contraband on 11.11.2008 at 10.30 A.M. in Delhi. Neither the prosecution nor the accused examined the police officials posted at Toll Plaza at Khirki Daula to prove their respective version. Statements under Section 161 Cr.P.C. given by them during investigation in FIR No.114/2009 cannot be commented as the complainant had no opportunity to cross-examine the said witnesses.

10. In the light of the above discussion, I am of the view that the prosecution has failed to establish the case beyond reasonable doubt. The impugned judgment cannot be sustained and is set aside. The appeal is accepted. The appellant be released forthwith if not required in any other case. All pending applications stand disposed of. Copy of the order be sent to the accused/appellant through Jail Superintendent. Trial Court record, if any, along with copy of this order be sent back to the Trial Court. (S.P.GARG) JUDGE September 27, 2013/sa

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