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Mohd. Zahid vs.state

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Court : Delhi

Decided On : Mar-31-2017

Appellant : Mohd. Zahid

Respondent : State

Judgement :

$~ * . IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. No.879/2002 Date of Decision :

31. t March, 2017 MOHD. ZAHID ..... APPELLANT Through Mr.K. Singhal, Adv. with Mr.Sachin Aggarwal, Adv. versus STATE ..... RESPONDENT Through Mr.Subhash Bansal, Standing Counsel for NCB with Mr.Shaswat Bansal, Adv. CORAM: HON'BLE MR. JUSTICE P.S.TEJI P.S.TEJI, J1 The present appeal has been filed by the appellant aggrieved by the judgment of conviction dated 30th January, 2002, convicting the appellant finding him guilty under Section 29 read with Section 21 of the Narcotic Drugs & Psychotropic Substances Act (hereinafter referred to as NDPS Act) as well as order on sentence dated 14th February, 2002 vide which the sentence was passed against the appellant to undergo rigorous imprisonment for a period of fifteen years and to pay fine of Rs.1,50,000/- for the offence punishable under Section 29 read with Section 21 of the NDPS Act in view of the provisions of Section 31(ii) of the NDPS Act, in default of payment of fine, convict was ordered to further undergo simple imprisonment for six months with benefit under Section 428 Cr.P.C. Crl.A. No.879/2002 Page 1 of 15 The facts in brief are that on 15th June, 1999, a telegram was 2. received from the Deputy

Director (Customs), Amritsar stating about the recovery of four kilogram of heroin from Samjhota Express which was coming from Pakistan and arrest of Mohd. Zahid in connection with the same. The said telegram further disclosed that that the appellant had to supply this heroin to the some Nigerian nationals in Delhi. Mohd. Zahid, the appellant herein, gave information to Mr.Devinder Dutt, Deputy Director General (Enforcement), NCB that he had earlier stayed at Seema Lodge, Paharganj and that his passport and other documents were also kept in one of the rooms of the said lodge. A team was sent to Seema Lodge from where it was established that the accused Mohd. Zahid had been staying there since 7th June, 1999 and several documents were also recovered from his room. The accused Mohd. Zahid disclosed that he could identify the place where the said Nigerians were staying in Delhi. On 17th June, 1999, at request, the Deputy Director, Customs, Amritsar brought accused Mohd. Zahid to Delhi where a raiding team of the NCB officers was constituted. Thereafter, the accused Mohd. Zahid led the team to House No.K-5, Srinivas Puri where supply of 750 grams of heroin was effected by him on an earlier date. The door was opened by one Nigerian namely Harry to whom the identity of the team members of NCB officers was disclosed when one Nigerian lady Sandra also came. Thereafter, two raiding members entered in another room where two male Nigerians were found lying on the bed who introduced themselves as Charles Udo & Osita Okafor. Notice under Section 50 of the NDPS Act was served on all of them and the room was searched where one locked cupboard was found which was opened by the accused Sandra Crl.A. No.879/2002 Page 2 of 15 The prosecution had examined as many as using a key. From inside the cupboard, one polythene bag was found which contained white crystalline powder which upon testing & weighing, was found to be heroin weighing 750 grams.

3. fourteen prosecution witnesses namely PW1K.L. Gauba; PW2A.S. Budhwar, IO, NCB; PW3Madan Singh; PW4Joythimon Dethan; PW4Sh.Jyoti Man; PW5Mr.N.S. Ahlawat; PW6Mr.Amresh Jain; PW7Harish Ahuja; PW8Mrs.Savitri Jaswani.; PW9M.S. Bawa; PW10Hukum Singh; PW11V.B. Chaurasiya; PW12Sh.Devinder Singh; PW13N. Mohanta; & PW14Sh.Narender Kumar. The statement of the accused Mohd. Zahid was recorded under Section 313 of the Cr.P.C.

4. The appellant was held guilty by the learned Special Judge, Amritsar vide judgment dated 8th December, 2000 by which the appellant was convicted under Sections 21 & 23 of the NDPS Act and sentenced to undergo rigorous imprisonment for twelve years with fine of Rs.1,00,000/- on both counts separately. However, under the provisions of Section 31(ii) NDPS Act, the appellant was sentenced to undergo rigorous imprisonment for fifteen years and fine of rupees one lakh fifty thousand for the offence punishable under Section 29 read with Section 21 of the NDPS Act. In default of payment of fine, the convict was to further undergo simple imprisonment for six months.

5. The grounds taken by the appellant for filing the appeal was that he is a poor person and that the case registered against him was totally false. It was also requested by the appellant that his appeal may be considered sympathetically.

6. Apart from challenging the judgment of conviction, learned counsel for the appellant further submitted that as per the nominal Crl.A. No.879/2002 Page 3 of 15 that the sentence of the convict roll as on 28th June, 2016, the appellant had undergone the sentence of six years, five months and eleven days. It was also mentioned in the nominal roll in this FIR No.43/1999 started w.e.f. 16th June, 2012 as earlier he was undergoing sentence in FIR No.134/1999 registered under Section
NDPS Act, PS Customs, which was sentenced by the Amritsar Court. It was also mentioned in the said nominal roll that in FIR1341999 registered under Sections
NDPS Act, PS Customs, sentence in that case completed on 16th June, 2012.

7. Per contra, argument advanced by learned Additional Public Prosecutor for the State is that the appellant was rightly held guilty under Sections 29 read with Section 21 of the Narcotic Drugs and Psychotropic Substances Act as amended by the NDPS Act, 2001. It is submitted that the accused Mohd. Zahid led the raiding team of the NCB Officers to House No.K-5, Srinivas Puri where he had earlier supplied 750 grams heroin and that the said quantity of heroin was effectively recovered from the cupboard which was opened with the help of key by the accused Nigerian national Sandra Nwabufo.

8. evidence led is being examined.

9. PW1K.L. Gauba in his statement stated that while working as Intelligence Officer, NCB, Delhi, he received information from the Deputy Commissioner, Amritsar to the effect that one Mohd. Zahid who was arrested had disclosed that he arrived in Delhi and supplied 750 grams of heroin to Nigerians at their house situated at K-5, 1st Floor, Sriniwaspuri, New Delhi. After taking permission from the court of Amritsar, the accused Mohd. Zahid was brought to Delhi by Customs Officers, Amritsar on 17th June, 1999. This Upon hearing the rival contentions of the parties at length, Crl.A. No.879/2002 Page 4 of 15 witness further stated that he had called two independent witnesses namely Hukum Chand & Vivek Kumar. PW1further stated that he along with the Customs Officers of NCB; accused Mohd. Zahid and the independent witnesses, visited the afore-mentioned house which was opened by one Harry and meanwhile one lady namely Sandra also came. This witness stated that the officers of NCB as well as Custom Officers apprised the accused persons about the information of their having contraband i.e. heroin. Thereafter, this witness showed search warrants to the accused persons and instructed the officer to effect personal search as well as the search of the house in the presence of gazetted officer or a Magistrate. Thereafter, notice (Ex.PW1C) under Section 50 of the NDPS was given to the accused persons but they told that the same could be done in the presence of Mr.N.S. Ahlawat, the Gazetted Officer of NCB. While conducting house search of the accused nos.1 & 2, from the bedroom, nothing was recovered, however a locked cupboard was found. This witness asked the accused Sandra to bring key of the cupboard and when the cupboard was opened by her, one packet containing crystalline white powder was recovered which when tested by the field kit, gave positive results for heroin weighing 750 grams. PW1further stated that out of the recovered powder, two representative samples (marked as A-1 & A-2) of five grams each were taken out and kept in a small polythene pouch separately and further kept in white envelope and sealed with the seal of NCB and thereafter kept in a card board box which was wrapped with cloth and sealed with NCB seal. PW1further stated that all the proceedings were done by him on the spot and seizure was conducted vide Punchnama Ex.PW1E which bore his signature at point A. This witness further stated that facsimile of Crl.A. No.879/2002 Page 5 of 15 seal was also affixed on each page of punchnama at point L. This witness stated that he deposited the

case property along with samples in the Malkhana; recorded the statement of punch witness namely Vivek Kumar (Ex.PW1N) which bore the signatures of this witness at point A. Thereafter, this witness submitted the report (Ex.PW1O) to his senior officers on that date itself which bore his signatures at point A.

10. PW2A.S. Budhwar, IO, NCB in his statement stated that pursuant to the summons issued, accused no.1 Sandra appeared before him and tendered her statement (Ex.PW2A) which, on her request, was reduced to writing at her request for the reason that she could not write English but could only understand and read the same. PW3Sh.Madan Singh who was the Intelligence Officer 11. NCB (DZU) who had recorded the statements of Charles Udo & Usita Okafo on 17th June, 1999.

12. PW4Mr.Joythay Mon Dethan, in his statement stated that he was IO, NCB at the relevant time and was part of the search team. This witness stated that he along with others, conducted search at the first floor of House No.K-5, Srinivaspuri, New Delhi and prepared panchnama on 17th June, 1999 (Ex.PW1F). This witness, thereafter, recorded the statement of Harry Lindsay. PW5Sh.N.S. Ahlawat, who at the time of giving statement 13. was posted as Assistant Director, NCB, stated that on 15th June, 1999, Sh.Devinder Dutt, Dy.Director General (Enf.) at NCB from Headquarters, message Dy.Commissioner (Customs), Amritsar to the effect that one Mohd. Zahid had been apprehended with four kilogram of heroin from Samjhauta Express, which was to be delivered to Nigerian telephonic received a Crl.A. No.879/2002 Page 6 of 15 nationals who were stating in New Delhi. This witness further stated that as per the message received, accused Mohd. Zahid further disclosed that earlier he stayed at Seema lodge, Balli Maran, Delhi where his passports as well as other documents were lying. This witness stated that acting on this information and after discussion with Dy.Director General as well as Zonal Director of NCB, a team of officers was sent to the Seema Lodge and upon checking of room, a passport and other papers were recovered. The information to this effect was conveyed to Dy.Commissioner, Customs, Amritsar and that on 16th June, 1999, request was made for bringing the accused Mohd. Zahid to Delhi for the purpose of identification of the house as well as Nigerian Nationals to whom supply of four kilogram heroin was to be effected. PW5Sh.N.S.

Ahlawat further stated that accordingly, a team consisting of Sh.Madan Singh, Sh.N. Mohanta, Sh.Ram Singh, Sh.Karan Singh, Sh.K.L. Gauba, Sh.Jyoti Man & Sh.Jai Prakash went along with the accused Mohd. Zahid to Srinivaspuri. This witness corroborated and testified the statement of PW1K.L. Gauba to the effect that upon entering the said house by PW1as well as the accused Mohd. Zahid, door was opened by one Nigerian national and when they entered the room, other team members including him as well as two punch witnesses also came. Thereafter, PW1Sh.K.L. Gauba apprised the Nigerian National they had information about 750 grams of heroin concealed in the house which was supplied by the accused Mohd. Zahid; personal search of all the members of the raiding team was offered to the accused who denied; notice under Section 50 of the NDPS Act was shown to them and the accused persons were offered to be searched before a Magistrate or a Gazetted Officer. Since this witness was a that Crl.A. No.879/2002 Page 7 of 15 Gazetted Officer, he asked team members to search the room thoroughly. Thereafter, a room was searched by the team where a cupboard in a showcase was found, the key of which was demanded by PW1Sh.K.L. Gauba which was brought by Nigerian lady Sandra. The cupboard was opened by PW1from which one polythene bag was recovered which when opened, found to contain white crystal material which when checked by the Field Drug Identification Kit, proved heroin. This witness corroborated the statement of PW1Sh.K.L. Gauba with regard to drawing of two samples of 5 gram each; putting in two separate pouch marked as A1 & A2; sealing the same with the seal of NCB issued by PW1Sh.K.L. Gauba as well as putting paper slip with the signatures of the accused panch witnesses. PW6Sh.Amresh Jain in his statement stated that on 14th 14. June, 1999, he was posted as Deputy Commissioner, Anti Smuggling Customs, Amritsar when he received information with regarding to smuggling of heroin in Samjhauta Express which was coming from Pakistan. Thereafter, this witness deputed the team which recovered four kilogram of heroin and that after ensuring surveillance, arrest of one Mohd. Zahid was made. This witness stated that thereafter upon interrogation, Mohd. Zahid revealed that the consignment of contraband was to be delivered to a group of Nigerians who were staying in Delhi.

15. PW10Sh.Hukum Singh in his statement stated that he used to live on the ground floor of House No.K-5, Srinivas Puri and that in the year 1999 during

summer vacations, some officials from the Narcotic Control Bureau visited his residence and informed him that they wanted to search his house where some Negros were staying. This witness informed them that they were staying on the Crl.A. No.879/2002 Page 8 of 15 further stated that This witness first floor of the premises. PW10stated that he accompanied the NCB officials to the first floor. Thereafter, they searched the first room of the house but nothing was recovered. This witness identified the accused lady i.e. Sandra who was also stated to be there. the premises was permanently occupied by the lady accused and Charles Udo. This witness testified the statement of PW1K.L. Gauba as well as PW5N.S. Ahlawat to the effect that on searching the second room, a white plastic bag was recovered which when checked by the officials at the spot, found to be heroin. PW10Hukum Singh further stated that the NCB officials took samples of five grams each from the said lot which was first tied with rope/thread and then wrapped in a cloth parcel. This witness, on being asked to clarify, stated that the quantity of 750 grams recovered, was tied with thread and wrapped in the cloth parcel. This witness further testified that panchnama (Ex.PW1E & PW1F) was drawn at the spot and its annexure is Ex.PW1G; officials had written down the proceedings which took place at the spot and signed the same; samples were kept in a packet and a seal was affixed by punching. PW10Hukum Singh identified the accused Mohd. Zahid in Court and stated that this person was present along with the NCB officials and that the house was also searched by the NCB officials on the pointing out of the accused Mohd. Zahid.

16. PW11Sh.V.B. Charausiya in his statement stated that on 18th June, 1999, while working as Assistant Chemical Examiner, CRCL, Pusa Road, Delhi, sealed sample packets along with the test memo (authority letter/covering letter) which was brought by PW12Sh.Devinder Singh, were marked to him and that the packet and the test memo were kept in the store room in the presence of PW Crl.A. No.879/2002 Page 9 of 15 14 Sh.Narender Kumar, Chemical Examiner. This witness further stated that on 12th August, 1999, the sample packet was taken out of the strong room and concluded on 27th August, 1999; report was finalised which was handed over to the investigating officer i.e. PW1K.L. Gauba and analysis of the sample was conducted in the supervision of PW14Sh.Narender Kumar. This witness identified the covering letter Ex.PW5A which was brought

along with the sample packet. PW13Sh.N. Mohanta in his statement stated that on 17th 17. June, 1999, while he was posted as IO in NCB/DZU, he arrested four foreign nationals on the basis of recovery of drug. He stated that the arrest memo (Ex.PW8A) of accused Sandra bore his signatures at point C while the arrest memo (Ex.PW13A) of accused Harry bore his signatures at points A & B while the signature of witness Rama appeared at point E & F (Ex.PW13A).

18. PW14N. Narender Kumar in his statement stated that on 18th June, 1999 while working as Chemical Examiner in RND Division at CRCL, New Delhi, he received one forwarding letter from NCB having two test memos and a sealed envelope which were stated to be containing samples of drugs. This witness further stated that on the very day, he verified the sample and gave directions for accepting the sample which was allotted to PW11Sh.V.B. Charausiya. PW14further stated that on 12th August, 1999, the sample was taken out for analysis by PW11Sh.V.B. Chaurasia and that the same was opened in the presence of this witness, which after examination, found to have heroin i.e. diacetylmorphine. PW14stated that on 27th August, 1999, a final report was issued under his signatures and that the report (Ex.PW Crl.A. No.879/2002 Page 10 of 15 11/B) along with remnant was collected by PW1K.L. Gauba.

19. Thus, it is clear from the testimony of PW1K.L. Gauba that at the instance and pointing out of the accused Mohd. Zahid to the effect that he had supplied 750 grams of heroin to the Nigerian Nationals at New Delhi, a raid was conducted by the duly constituted raiding team of the NCB officers accompanied by the accused Mohd. Zahid at K-5, First Floor, Sriniwaspuri, New Delhi where recovery of 750 grams of heroin was made from the possession of the accused Sandra as well as Harry. So far as the recovery of contraband i.e. heroin is concerned, the statement of PW1K.L. Gauba has been duly corroborated and testified by PW4Sh.Joythey Mon Dethan, PW5Sh.N.S. Ahlawat & PW10Sh.Hukum Singh who in the same breath had stated that raid was conducted at the premises at the instance of the appellant in which the supplied contraband i.e. 750 gram heroin was recovered. They have also stated in the same line that the proceedings were conducted at the spot by the investigating officer PW1K.L. Gauba, in-charge of raiding team and that on search of house, recovery of heroin, its seizure, as well as the other

proceedings were also conducted.

20. All the above witnesses were cross-examined at length but the defence failed to put any dent to their testimony. PW1K.L. Gauba; PW4Sh.Joythey Mon Dethan, PW5Sh.N.S. Ahlawat & PW10Sh.Hukum Singh remained unshaken with regard to conducting of raid and recovery of the supplied contraband i.e. heroin. They have also stated in a single voice that heroin weighing 750 grams was recovered at the instance of the appellant; notice under Section 50 of the NDPS Act was served upon the co- accused persons and required proceedings were conducted at the Crl.A. No.879/2002 Page 11 of 15 the instance of spot.

21. The testimony of the raiding party members has also been duly corroborated by the report of CRCL, New Delhi which shows that when the sealed sample was opened and examined, the same was found to be heroin i.e. diacetylmorphine. The report CRCL, New Delhi duly proves the case of the prosecution that the recovered substance at the appellant was a contraband i.e. heroin.

22. The discussion made above shows that the testimony made by the officials of the NCB is trustworthy and their testimony coupled with report of CRCL, New Delhi, brings the case of prosecution within the four corners of the alleged commission of offence which culminated into the conviction of the appellant. This court is of the considered opinion that the prosecution has successfully proven the guilt of the appellant.

23. As a result, no error or illegality is found in the view taken by the Trial Court and the judgment of conviction dated 18th July, 2001 and order on sentence dated 14th February, 2002.

24. A prayer is made by learned counsel for the appellant to the effect that a lenient view may be taken in terms of sentence awarded to the appellant keeping in view the fact that the appellant has already been held guilty for recovery of four kilogram of heroin and that he had already completed twelve years of incarceration in FIR No.134/1999 registered under Section 29 read with Section 21 of the NDPS Act, PS Customs, which was sentenced by the Amritsar Court. It is further submitted that since the recovery of 750 grams of heroin from New Delhi was

effected only on the disclosure statement made by the appellant pursuant to the case registered at Amritsar and that the same was the sequel of Crl.A. No.879/2002 Page 12 of 15 that even as on 28th June, 2016, that case, registration of another FIR No.43/1999 at New Delhi for recovery of 750 grams of heroin from Delhi and consequent thereto, judgment of conviction dated 30th January, 2002, convicting the appellant finding him guilty under 29 read with Section 21 of the NDPS Act as well as order on sentence dated 14th February, 2002 sentencing him to undergo rigorous imprisonment for a period of fifteen years, are bad in law inasmuch as the appellant cannot be held guilty and convicted twice for the same offence. It is also submitted by learned counsel for the appellant the appellant has undergone the sentence of six years two months and eleven days for the offence under Section 29 read with Section 21 of the NDPS Act against which the recent appeal has been preferred, out of the total sentence of fifteen years awarded by the order on sentence dated 14th February, 2002. The peculiar circumstances of the present case are that at the 25. instance of the applicant, recovery of 750 grams of contraband i.e. heroin was made by the team of NCB officers. It is also clear from the provisions of Narcotic Drugs & Psychotropic Substances Act as amended in October, 2001 that 250 grams of heroin was commercial quantity though in the present case, recovery of 750 grams of heroin was made. Thus, a large quantity of heroin was recovered at the instance of the appellant i.e. Mohd. Zahid. The Honble Supreme Court in number of cases has held that to curb the rising drug supply cases and the fact that they are encouraged to become drug peddlers once they get addicted as well as to provide safeguard against such evils, harsh steps should be taken to discourage the drug peddlers.

26. Drug abuse has revealed an alarming proportion in recent Crl.A. No.879/2002 Page 13 of 15 years. DRUG CULTURE is fast making inroads into the lives of the young people from all walks of life. The consequences of illicit drug use are widespread, causing permanent physical and emotional damage to users and negatively impacting their families, co-workers, and many others with whom they have contact. Drug use negatively impacts a user's health, often leading to sickness and disease. In many cases, users die prematurely from drug overdoses or other drug-associated illnesses. Besides, it also distorts the health and fabric of

the society and it is considered to be the originator for petty offences as well as heinous crimes like smuggling of arms & ammunition and money laundering. With the growth and development of world economy, drug traffickers are also seamlessly trafficking various type of drugs from one corner to other ensuring the availability of the contrabands for vulnerable segment of the society who fall into the trap of drug peddlers and traffickers. There should be tough penalties against all those making profits from the drugs trade. Laws are in place to deal with drivers under the influence of drugs but there are no measures in place to detect them. India's approach towards tackling the menace of drugs is well enshrined in our Constitution which in the Directive Principles, lay down that the State shall make endeavours to bring about the trafficking of drugs and its linkages with other organized crimes is a major challenge for the drug law enforcement agencies and the Ministry of Home Affairs, Narcotics Control Bureau and other drug law enforcement agencies of India are fully capable to deal with such challenges. Thus, this types of practices need to be discouraged tooth and nail in order to organize the society and protect it from such major evil. Crl.A. No.879/2002 Page 14 of 15 In the present case, the Trial Court has already taken a 27. lenient view by awarding minimum sentence of imprisonment to the accused Mohd. Zahid. Section 31(ii) of the NDPS Act provides for enhanced punishment for offences after previous conviction. In the case at hand, it is an admitted fact that the appellant was sentenced to ten years rigorous imprisonment in a case arising out of FIR No.134/1999 and as per Section 31(ii) of the NDPS Act, he has been awarded minimum sentence of fifteen years rigorous imprisonment.

28. This court does not find any ground to interfere with the order on sentence dated 14th February, 2002 passed by the court below. With the above observation, the appeal is dismissed. MARCH31 2017 aa (P.S.TEJI) JUDGE Crl.A. No.879/2002 Page 15 of 15

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