

Nafiz Ahmed Vs. the State

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Court : Mumbai

Decided On : Aug-01-1988

Reported in : 1988(3)BomCR319

Judge : G.D. Kamat and ;Dr. G.F. Couto, JJ.

Acts : Narcotic Drugs and Psychotropic Substances Act - Sections 21; Evidence Act

Appeal No. : Criminal Appeal No. 15 of 1988

Appellant : Nafiz Ahmed

Respondent : The State

Judgement :

Dr. Couto, J.

1. This appeal is directed against the Judgment and order dt. 25th January, 1988, passed by the learned Assistant Sessions Judge, Panaji, whereby the appellant herein was convicted for an offence punishable under S. 21 of Narcotic Drugs and Psychotropic Substances Act.

2. The appellant had been charged with the aforesaid offence on the grounds that he was found in possession of 800 grams of brown sugar. The prosecution case has been that on 10th August, 1986, during the morning, P.S.I. Mohan Karckar

received information that two boys had come from Bombay with drugs and were lodged in the Hotel Bardez of Mapusa. On enquiry, he came to know that they had left the Hotel and were at the bus stand. P.S.I. Karckar, accordingly, went to the bus stand along with the informant and at about 12 noon, the informant pointed out the original accused No. 1 as the drug peddler. The accused No. 1 was taken to the police station for interrogation and in the course of it, he disclosed that he had entrusted the drugs to his friend who would be waiting for him at the Siolim ferry wharf. The police party, therefore, went to the said place taking with them accused No. 1. At the Siolim ferry wharf, accused No. 1 pointed the appellant herein who, in turn, informed the police that he had kept the drugs in the house of P.W. 1 Sunil Revodkar, at Guddem. The police party went there and recovered a bag wrapped in a towel inside of which there were 800 grams of heroin.

3. The Prosecution examined in all five witnesses in order to prove its case. P.W. 1 is Sunil Revodkar, P.W. 2 is Chandravati Revodkar, mother of P.W. 1, a Panch witness Hanumant Naik was examined as P.W. 3 and in addition, head-constable Narayan Kerkar and P.S.I. Karckar. It will not be necessary, for the purpose of this appeal, to look not the evidence of all these witnesses, as it suffices to examine the evidence of Sunil Revodkar and of his mother Chandrawati only.

4. Sunil Revodkar stated that he resides at Guddem of Siolim and he knows both the accused. He had been working on the buses of one Surya Mayckar which ply between Goa and Bombay. The said Surya has his office at Mahim, Bombay and the witness came to know accused No. 1 Santosh at Bombay. He further deposed that on 8th April, 1986, at about 10.00 a.m. he was sitting at the Temple of Guddem when accused No. 1 came there. Accused No. 1 told the witness that he was putting up in the Bardez Hotel at Mapusa and requested the witness to accompany him. Sunil Revodkar agreed and went along with accused No. 1 to that Hotel where he met the appellant herein. They had tea and after sometime, according to the witness, accused No. 1 told him to come on the next day to the Hotel as he had some work for him. The witness promised to come and, accordingly, on the next day went again to the Hotel in between 9.00 a.m. to 10.00 a.m. At that time, both the accused were present No. 1 told him that he has brought some brown sugar and requested the witness to find some purchasers.

The witness added that he told in reply to accused No. 1 that he was neither smoking brown sugar nor he was concerned with it. Then, according to the witness, accused No. 1 showed him brown sugar which was kept in a packet which was about 4 to 5 inches long and weighing about 1/2 kg. After this talk, the witness left for his place and while he was waiting for a bus at the Mapusa bus stand, he met one Abel who he knew to be trafficking in drugs. Therefore, he told Abel that accused No. 1 has brought some goods (mal) and that he should meet accused No. 1. Abel promised to go there within one hour to take the drugs. Abel left the place and after sometime, both the accused and Abel came to the bus stand and met the witness in whose presence Abel promised accused No. 1 to go home and bring money. Then, accused No. 2 was sent to Siolim with the brown sugar. Accused No. 1 also boarded a bus which was going to Siolim. At that time, a police party came to the place and took in custody the witness and accused No. 1. The said police officer, according to the witness, asked him where he had kept the drugs, and in reply, the witness informed the police that accused No. 2 had taken them to Siolim, and further, that he would point out where the goods had been kept. Thereafter, the police party took the witness and accused No. 1 to Siolim and, on being informed that the goods has been kept in the house of the witness, went there and recovered the envelope of brown sugar. In cross-examination, inter alia, the witness stated that he knew that Abel who was dealing with drugs, and therefore, he had opened the topic of the purchase of drug with him.

5. P.W. 2, Chandrawati Revodkar, is the mother of P.W. 1. She stated that she knows accused No. 1 Santosh Achrekar for the last about eight years. She was in Bombay at the house of her maternal uncle Surya Mayekar and it was there that she met accused No. 1. She further stated that she knows accused No. 2 who had come to her place at Siolim in the company of accused No. 1. She also deposed that accused No. 1 gave her, on that occasion, a paper bag and asked her to keep it in the house. The said paper bag was the one which was recovered by the police containing the brown sugar.

6. As rightly pointed out by Mr. Gonsalves, the learned counsel appearing for the appellant, the evidence of P.W. 1 Sunil Revodkar leaves no margin for doubts and

it clearly indicates that the said Sunil was very much involved in the transaction, definitely being one accomplice. In fact, as the learned counsel urged, otherwise one fails to understand why at all accused No. 1 would approach him with a request to come to his Hotel room on the next day and why the said witness would agree immediately to go to the Hotel of accused No. 1 on the next day. Further, otherwise one cannot also understand how accused No. 1 asked him to find out purchasers for the brown sugar brought by him from Bombay and how the said witness immediately went in search of the purchasers and sent Abel to accused No. 1. These facts per se indicate that the witness Revodkar was intimately connected with the transaction of peddling of drugs. However, the evidence on record shows that the drugs were in possession of accused No. 1 and that it was accused No. 1 himself who handed over the said packet containing brown sugar which was recovered from the house of P.W. 2. In these circumstances, Mr. Gonsalves rightly contended that unless there existed corroboration, the evidence of the said witness Revodkar could not be accepted. In this connection, the learned counsel placed reliance in the decision of the Supreme Court in *Sarwan Singh v. State of Punjab* (: 1957 CriLJ1014).

7. In *Sarwan Singh's* case, the Supreme Court, while dealing with the evidence given by an approver, observed that an accomplice is undoubtedly a competent witness under the Indian Evidence Act, but there can be no doubt that the very fact that he has participated in the commission of the offence, introduces a serious stain in his evidence and as such, the Court are naturally reluctant to act on such evidence unless it is corroborated in material particulars by other independent evidence. The Court further observed that for the acceptance of the approver's evidence, or for that matter, of an accomplice, it is necessary that such evidence satisfies a double test. Firstly, it is necessary that the witness is a reliable witness, and then, if such test is passed, that his evidence is corroborated in material points by independent evidence.

8. The evidence of P.W. 1 summarized above is quite clear and we have no doubt whatsoever in agreeing with Mr. Gonsalves that Sunil Revodkar was an accomplice of accused No. 1. Revodkar, inter alia, stated that the appellant had taken the brown sugar to Siolim and that he had kept it in the custody of P.W. 2

Chandrawati. It was through this evidence that the prosecution has attempted to prove that the appellant was in possession of brown sugar. However, far from being corroborated, this evidence is in basic variance with the evidence of Chandrawati is the only material and relevant point, namely, who gave her the packet containing the brown sugar for safe custody. We have already seen that, in her evidence, Chandrawati stated that the said packet was given to her by accused No. 1. This being so and in the light of the law laid down by the Supreme Court in Sarwan Singh's case : 1957 CriLJ1014 , the evidence of P.W. 1 Revodkar cannot be relied upon.

9. Before we part with this case, we cannot but record our dissatisfaction with the manner in which this case was investigated by the police. As we have already mentioned, the evidence of P.W. 1 Sunil Revodkar clearly discloses his involvement in the transaction. We therefore find it difficult and we fail to understand why the police did not proceed further with the investigation and file a charge-sheet also against him. Similarly, the evidence on record shows that one Abel was very much involved in the transaction and in spite this, no efforts were made to trace the said Abel and to prosecute him also, if the reference made to him by P.W. 1 were true. We hope that the Police Officers will be alive to the seriousness of the cases for offences under the Narcotic Drugs and Psychotropic Substances Act, and therefore, will conduct the investigation with due care and without sparing anyone.

10. The result, therefore, is that this appeal succeeds and consequently, the impugned Judgment dt. 25th January, 1988, is hereby quashed and set aside. The conviction of the appellant under S. 21 of the aforesaid Act and the consequent sentence passed against the appellant are equally quashed. The appellant to be set free forthwith if not required in any other case.

11. Appeal allowed.