

Mathura Prasad Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-22-2005

Reported in : 2005CriLJ2741

Judge : R.C. Deepak, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 18 and 20; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Appeal No. 5536 of 2004

Appellant : Mathura Prasad

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : R.S. Tewari, ;Agnipal Singh and ;Pratima Singh, Advs.

Disposition : Appeal allowed

Judgement :

ORDER

R.C. Deepak, J.

1. This is a criminal appeal against the judgment and order of the then Special Judge, N. D. P. S. Act, Kanpur Dehat dated 4-1 -2002 in Special Sessions Trial

No. 98 of 1999 convicting and sentencing the accused-appellant under Sections 18/20 of the N. D. P. S. Act to 10 years rigorous imprisonment and a fine of Rs. 1 lac and in default of payment of fine he shall further undergo 2 years rigorous imprisonment.

2. I have heard Smt. Pratima Singh and Agnipal Singh, learned counsel for the accused-appellant, learned Additional Government Advocate for the State and perused the record.

3. According to the first information report, allegations, the Station Officer, started from police station Gajner, district Kanpur Dehat with a posse of police personnel vide G.D. No. 17 dated 1-8-1998 by official jeep DW/DW/A171 /2005/GSD-ABD/AKC/6081 /2005 for the search and arrest of some wanted criminals and was busy in the said work. On receiving an information from informer that Mathura Prasad Mishra, the appellant was selling charas from a room situated in his field in village Darauli. The information was received in village Rathigaon. The police party comprising of Station Officer Bharat Singh Solanki, S. I. Shyam Veer Singh and some constables proceeded for the above spot. The jeep was abandoned along with its driver in village Rathigaon, which was about 3 kilometers from the room where the accused was selling the charas. Before proceeding to the spot, the police party tried to procure the public witnesses, but nobody agreed to accompany them. The police party made the personal search to each other to ensure; none of them had narcotic substance with any of them. The police party thereafter proceeded for the destination concealing themselves from public gaze. They reached the concerned room and concealed themselves by the southern wall. Soon after they saw a person running away from the room. They arrested the person at some 10-15 steps from the room at 2:30 p.m. His name was verified by them. The arrested person revealed his name to the police party as Mathura Prasad Mishra son of Rajaram Mishra resident of village Darauli; police station Gajner, district Kanpur Dehat. He also revealed on enquiry the reason for his running away-. According to the; information given by him, he had charas, he smokes and also sells it. For this reason, suspecting the v police presence, he ran out from the room. The policemen offered, the accused whether he desired to give his search before the Magistrate or the Gazetted Officer. The accused replied that

he knew that he is in possession of charas and the collection from the sale of the said charas, he has full faith in the Station Officer concerned so he can take his search. The public also arrived by then. They were asked to be witnesses in the case, but all of them declined to be so. The search of the accused was taken by the Station Officer himself. In the search, from the right side waist of his dhoti, a polyethylene bag was taken out. On examination, it was found to be a black colour narcotic (charas) weighing about 200 grams. Rs. 2919/- was also recovered in the notes of different denomination from a cotton bag hanging from his neck. The accused failed to produce any licence for the sale of the charas. After the recovery, the charas was sealed in the same polyethylene bag, which was further covered by a cotton piece. Seal was affixed by the Station Officer. The sale sample was also prepared. The recovery memo was prepared by S. I. Shyam Veer Singh on the direction of the Station Officer. It was signed by the policemen who effected the arrest of the accused.

4. From the F. I. R., it is not at all clear whether any sample, as provided under the Act, was drawn at the spot. As a matter of fact there is nothing in the F. I. R. from which any such inference can be have by the Court even in the statement of P. W. 1 and P. W. 2. However, the chemical examiner's report on record i.e. Exhibit Ka-3 shows that the sample contained in a match box was found to be charas, but the fact that it was taken in a match box, nowhere it is stated by any of the two eye-witnesses named Bharat Singh Solanki-P. W. 1 and Shyam Veer Singh-P. W. 2 and even the Investigating Officer - P. W. 3 does not state a word about this fact. Therefore, it is not proved beyond doubt as to when and where and in what manner the sample was drawn. There is yet another fact that the alleged sample packet did not have any signature or the thumb mark of the appellant. It is a technical offence and the safeguards provided in the enactment requires a strict compliance. Failure, in the evidence, by these witnesses, to say when the samples were drawn from the same charas recovered allegedly from the appellant has a very serious bearing upon the ethnicity of the prosecution in this connection. I draw strength from a reported judgment namely Beni Prasad v. State of U.P., (2003) 46 All Cri C. 701 : 2003 Cri LJ 3185).

5. There is serious diversion in the statement of P. W. 1 and P. W. 2 with regard to the fact that the charas so recovered was in one piece or in several pieces. P. W. 1 said that he recovered only one piece. Contrary to him, P. W. 2 Rajendra Prasad stated that it was in two pieces. These differences in the statements of the two eye-witnesses render the alleged recovery to be highly doubtful. The appellant has denied the recovery from his possession. The conduct of the raid in the manner in which it was so done is highly dramatic. The police party claimed to have left the jeep and the driver 2 or 3 (two or three) kilometers away and covered the above distance on foot. The emergency of apprehending the culprit was staring at their faces, yet in broad day-light they chose to walk about 3 (three) kilometers. The accused was positively to be made vigilant by anyone of his village men or customers. It is improbable that the movement of the police party will not be noticed by the villagers during this hour of the day. Thus, the drama claimed to have been enacted by the policemen lacks total credibility. There are contradictions between the statement of the two policemen on the question of the personal search also. According to the P. W. 1 and the F. I. R., the mutual search was taken at the place where the vehicle was abandoned. In the statement, an improvement realising the difficulty was introduced during trial. According to P. W. 2, search was taken near the place of occurrence before affecting the arrest. Apart from it, there is contradiction between P. W. 1 and P. W. 2 with regard to the arrival of the villagers. P. W. 1 stated that the number of village men arrived at the place, but all of them refused to be the witnesses against the accused. P. W. 2 in contrast stated that after the arrest, none arrived at the place of occurrence. These circumstances have, therefore, made doubtful the mode and manner of arrest of the accused and the recovery of charas from him.

6. The prosecution did not bring on record the G. D. i.e. G. D. No. 17, by which the police party set out from the police station for search of some wanted criminals. It was a very important piece of document which would have assurance to their presence in village Rathigaon. The police is seeking cover from performing a legal obligation i.e. of taking out of the substance of the information it claims to have received at the said village from Mukhbir. Both the P. W. 1 and P. W. 2 failed during their examination to disclose the names of those wanted accused for whose apprehension they started vide an alleged G. D. No. 17 the Investigating Officer

did not corroborate this fact. Therefore, the entire allegation has been a play to cover up the whole drama.

7. The appellant is an old man aged about 75 years. He was never arrested earlier in any such offence. He is in jail for the past 3 years.

8. In view of what has been observed hither-to-above, it is crystal clear that the prosecution case and the evidence suffers from various factual and legal infirmities, vagueness and ambiguity, therefore, the appellant is entitled to benefit of doubt. The appeal should be allowed and is accordingly allowed. The judgment and order dated 4-1-2002 passed by the trial Court referred-to-above are set aside. The appellant Mathura Prasad Mishra is acquitted of the offence under Sections 18/20 of the N. D. P. S. Act for which he was convicted and sentenced by the trial Court. He is in jail. He shall be set at liberty forthwith if not wanted in any other case. There is no dispute with regard to the recovery of Rs. 2919/- from the appellant. The appellant has categorically stated in his statement under Section 313 Cr. P. C. that the money so recovered was his own money. Therefore, it is directed that Rs. 2919/- shall be returned to the appellant forthwith.