

Tejsingh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-11-2005

Reported in : 2005(2)MPHT369

Judge : A.K. Awasthy, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 18, 42, 50, 52, 55 and 57; ;Code of Criminal Procedure (CrPC) - Sections 374

Appeal No. : Criminal Appeal No. 310/2000

Appellant : Tejsingh

Respondent : State of M.P.

Advocate for Def. : M. Soni, Adv.

Advocate for Pet/Ap. : A. Saxena, Adv.

Disposition : Appeal dismissed

Judgement :

A.K. Awasthy, J.

1. Appellant has filed the appeal from the jail under Section 374 of the Cr.PC against the judgment and order dated 22-10-99 in Special Case No. 134/97 by Special Judge, Mandsaur of his conviction and sentence under Section 8/18 of the

Narcotics Drugs and Psychotropic Substance Act (in short 'NDPS Act') for the rigorous imprisonment of 10 years and fine of Rs. 1,00,000/- and in default of payment of fine further rigorous imprisonment of 2 years.

2. The prosecution case is that on 29-9-97 at about 1 P.M. at Police Station, GRP, Shamgarh, ASI Ramayan Yadav (P.W. 10) on receiving the secret information and forwarding it to the Superior Officer proceeded alongwith the raiding party to Railway Station, Shamgarh and on Platform No. 2 the bag which was in the hand of the appellant was searched in which, the opium weighing 950 gm was seized and after taking the sample of 30-30 gm the packet was sealed and the accused was taken to the GRP Shamgarh and after registering the case against the accused the opinion (Ex. P-4) to Police GRP was sent. That the sample was examined by FSL Sagar and vide report (Ex. P-21), dated 14-10-97 it was opined that the contraband was opium.

3. The accused has abjured the guilt and denied the prosecution allegation and pleaded false implication due to enmity. No witness in defence was examined.

4. The prosecution has examined 11 witnesses. The learned Trial Court has relied on the statement and the accused was convicted and sentenced as above.

5. The appellant has assailed the conviction on the ground that the learned Trial Court has erred in relying on the un-corroborated testimony of the official witness and on account of the infraction of the mandatory provision of NDPS Act, the conviction is bad in law and accused deserves to be acquitted.

6. Ramayan Yadav (P.W. 10) has stated that the secret information was received by him in the police station and on the Platform of the Railway Station, Shamgarh the accused was found carrying the bag and in the search of the bag, the opium weighing 950 gm was recovered and after taking the sample of 30-30 gm panchnama was prepared and the property was deposited in the Malkhana and the higher authorities were informed about the case against the accused. Gangaram (P.W. 5) has stated that he was in the raiding party and the opium was seized from the bag of the accused when the accused was apprehended at the platform of the Railway Station. That panch witness Laxmandas (P.W. 6) and Vijay

Shukla (P.W. 7) have not supported the prosecution and they were declared hostile. In case of P.P. Fatma v. State of Kerala, 2004 SCC Cr. Page 1, it is held that the statement of the Seizing Officer are reliable than the fact that the panch witness has not supported the prosecution is of no consequence. The learned Counsel for the appellant has failed to point out any infirmity in the statement of the Constable Gangaram (P.W. 5) and Seizing Officer Ramayan Yadav (P.W. 10). The statement is consistent and reliable. It is noteworthy that the Seizing Officer has complied the provisions of Sections 42 and 57 of the NDPS Act on the same day. The Reader of the GRP, Indore Vijay Shukla (P.W. 7) has testified that the information under Sections 42 and 57 of the NDPS Act was received on 29-9-97 in his office. The Seizing Officer has duly packed and sealed the seized item and the sample packet and it was immediately handed over to the head Constable Malkhana Krishnarao (P.W. 3). Krishnarao (P.W. 3) has testified that on 1-10-97 the sealed packet alongwith the sample packet was given to him to be kept in safe custody and on 3-10-97 he has sent the sample packet to FSL, Indore for the examination. The entry in Malkhana Register (Ex. P-2) corroborates his statement. Raisingh (P.W. 1) has testified that on 3-10-97 the sealed packet was taken by him from the Police Station and handed over to FSL, Indore. The report of FSL, Indore is Ex. P-21, dated 14-10-97 from which it is clear, that the packet was duly sealed and on comparison of the seal, the seal was tallying. Consequently, it is clear, that the seized opium was kept in safe custody and it was got examined just after few days by FSL, Indore. The FSL, Indore has reported that the contents are opium. Consequently, it is proved that the Seizing Officer has not violated the provisions of Sections 42, 52, 55 and 57 of the NDPS Act. It is reiterated in case of Megh Singh v. State of Punjab, 2003 AIR SCW 4536, that the provisions of Section 50 of the NDPS Act are not applicable in case of the recovery of the contraband from the bag which was in the hand of the accused. The learned Trial Court has not committed any error in holding the accused guilty under Section 8/18 of the NDPS Act and the minimum sentence was rightly awarded to the appellant.

7. Appeal is devoid of merits and it is, hereby, dismissed.

