

Vinod Kumar Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Aug-24-2005

Reported in : 2005CriLJ4757

Judge : S.L. Jain, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 15, 42, 50 and 50(1)

Appeal No. : Crl. A. No. 643 of 2001

Appellant : Vinod Kumar

Respondent : State of Madhya Pradesh

Disposition : Appeal dismissed

Judgement :

S.L. Jain, J.

1. Appellant-Vinod Kumar has been convicted under Section 8/15 of the Narcotic Drugs and Psychotropic Substances Act (for short, 'the Act') and sentenced to RI for 10 years and fine of Rs. 1 lakh in default whereof, further R.I. for 2 years.

2. The facts of the case lie within narrow compass. On 13-12-97 M.S. Parihar, ASI, Police Station, Kotwali, Mandsaur received an information that appellant along

with co-accused Prakash is likely to transport Dodachura of opium. ASI, M. S. Parihar called panch witnesses and informed them regarding the information received by him. A report to that effect was recorded in Rojnamcha Sanha No. 1012. He also prepared panchanama Ex. P/5 and sent information to his immediate superior. With the police force and the Panch witnesses, ASI Parihar reached bus stand Mandsaur where appellant was standing near the booking office. He was carrying two bags of black colour. Another person Prakash was also present carrying a yellow bag. Appellant was caught at the spot but, co-accused Prakash fled away.

3. Inspector Parihar informed the appellant of his right to be searched before the Gazetted Officer. The appellant gave his consent for search by ASI Parihar. ASI Parihar and Constable Shishupal accompanying him gave their own search to appellant. Panchnama Ex. P/7 was prepared in this regard. Thereafter, the bags which were carried by appellant-Vinod Kumar were opened. The bags contained Dodachura of opium. The same was seized. The seized article was weighed. The weight of Dodachura of one bag was found to be 6.6 kg. and the weight of Dodachura of other bag was found to be 6.7 kgs. Ex. P/7 is the Panchanama prepared by ASI Parihar. 500 gms. of Dodachura was separately seized for sample from each bag. The bulk recovered from the appellant and also the samples were properly sealed and a chit containing the signatures of the Parich witnesses and appellant was stucked on the bag's.

4. The appellant was arrested. Appellant along with seized article was brought to the police station and crime was registered. Seized Dodachura of opium was handed to Incharge, Malkhana for its safe custody. A report containing arrest and seizure was sent to senior officer. The aforesaid samples were sent to FSL, Sagar for analysis. According to the report of FSL, Sagar the article was found to be Dodachura of opium.

5. After completion of investigation, a charge-sheet was tiled against the appellant for the aforesaid offence on which a charge was framed against the appellant.

6. Appellant abjured his guilt and pleaded that he has been falsely implicated. On the date of incident, he was standing near the shop of Arif from where he was

arrested.

7. After concluding the trial, learned trial Judge found the appellant guilty and, as such, convicted and sentenced him as indicated above.

8. Co-accused Prakash who absconded from the spot was subsequently arrested and was prosecuted. He was acquitted by Special Judge (NDPS Act), Mandsaur in ST No. 25/98.

9. I have heard Ku. Rekha Shrivastava, learned Counsel appearing for the appellant and Shri G. S. Chouhan, G.A. for the State and gone through the record of the case.

10. Ku. Shrivastava led me through the record and contended that the learned trial Judge erred in holding the appellant guilty of the offence charged. She submitted that the conviction and sentence imposed upon the appellant are bad, improper and illegal.

11. Per contra, learned Counsel for the State has supported the judgment of trial Court.

12. ASI M. S. Parihar, P.W. 10, has stated that on receiving the information that appellant is likely to transport the contraband article, he along with police force and Panch witnesses went to bus stand Mandsaur. Appellant was standing near the bus-stand along with co-accused Prakash and was carrying two bags in his hand. He informed the appellant of his right to be searched before the Gazetted Officer or Magistrate. Appellant gave his consent for search by him. The bags which were recovered from the appellant were opened and it was found that the bags contained Dodachura of opium. The bags were seized. The seized articles were weighed and found that one bag contained 6.6 kgs. of Dodachura and another bag contained 6.7 kgs, of Dodachura. For sample 500 gms. of Chura was separately seized from each bag. This witness has been corroborated by Constable Shishupal Singh and partly corroborated by panch witness Manjur Hussain (P.W. 5).

13. Learned Counsel for the appellant contended that independent witness Jakir (P.W. 8) has not corroborated the statement of police officer. Other panch witness Manjur Hussain also has not fully corroborated the evidence of police officers, hence, conviction cannot rest on uncorroborated testimony of the police officer.

14. The contention is not acceptable. A police officer or a constable cannot be considered absolutely as partisan witness. The evidence of police officials cannot be discredited merely because they are police officials. There is no rule of law or prudence which lays down that conviction cannot be recorded on the evidence of police officials even if found reliable unless corroborated by some independent evidence. After careful scrutiny of the evidence of police officials the trial Court found it to be trustworthy and reliable. After careful perusing the evidence of police officials I also feel that the same inspires confidence and is trustworthy and reliable. The accused could not show any enmity with the police officials. There is no reason that ASI Parihar and Constable Shishupal will falsely implicate the appellant.

15. Learned Counsel for the appellant next contended that the mandatory provisions contained in Sections 42 and 50 of the Act have not been complied with.

15A. It is true that mandate of law as incorporated in the Act is required to be strictly complied with, in view of the grave consequence which are likely to be followed on proof of possession of illicit article. The safeguards in various provisions of the Act must be proved to have been strictly followed but, on carefully perusing the evidence of M. S. Parihar I find that he recorded the information in writing. The accused was informed of his right to be searched before the Gazetted Officer or Magistrate. Seized articles were kept in safe custody and a full report of arrest and seizure of article under the Act was made to his immediate superior, therefore, this contention also is not acceptable. Moreover, this is a case in which the building, conveyance or place was not to be searched. Therefore, the provisions of Section 42 of the Act do not apply. Similarly it is not a case of personal search of the appellant. The contraband articles were found in the bags. For the search of a bag compliance of Section 50 of the Act is not necessary.

16. Further non-compliance of Section 50(1) of the Act will not render the evidence collected inadmissible and the search as a result thereof will not vitiate.

17. The evaluation made by the trial Court on the basis of material witnesses does not suffer from any illegality, manifest error or perversity. The trial Court carefully wrote the judgment and exhaustably considered the evidence and recorded the reasons which are pre-eminently reasonable and support the order of conviction.

18. Aforesaid being the position regarding the evidence given by the prosecution to bring home the guilt of the accused, I do not find any substance in any of the contentions raised by the learned Counsel for the appellant.

19. The trial Court has considered and appreciated the evidence on record in proper perspective and there is no reason for interference with the conviction of the appellant.

20. So far as the sentence is concerned looking to the seriousness of the offence, sentence of ten years' RI and fine of Rs. 1 lakh which is a minimum sentence prescribed by law cannot be said to be harsh and calls for no interference.

21. In view of what has been discussed above, I do not find any merit in this appeal and the same is dismissed. The conviction and sentence recorded by the trial Court are hereby maintained.