

Manoj Sahi Vs. State

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Court : Uttaranchal

Decided On : Mar-17-2008

Reported in : 2008CriLJ3216

Judge : J.C.S. Rawat, J.

Appellant : Manoj Sahi

Respondent : State

Disposition : Appeal allowed

Judgement :

J.C.S. Rawat, J.

1. This criminal appeal has been filed against the judgment and order dated 26-8-2006 passed by Ms. Kumkum Rani, the then Sessions Judge/Special Sessions Judge, Pithoragarh in Special S.T. No. 10/2004, whereby the Special Sessions Judge has convicted the appellant and sentenced him to undergo RI for ten years and to pay fine of Rs. 1 lakh under Section 20 of the N.D.P.S. Act. In default of payment of fine, the appellant shall undergo S.I. for further two years.

2. The case of the prosecution, in brief, is that on 8-4-2004 at about 18.15 hours Laxman Singh Bisht PW3, Incharge of the police station Pithorgarh received an information that one person namely Manoj Sahi who coming from Jajardeval to

Pithoragarh was carrying Charas (contraband material) with him. Believing this, Laxman Singh Bisht PW3 alongwith Constable Keshav Lal PW4, Constable Kailash Pangaria and Constable Vijay Singh reached at Panda Barrier. They waited there for that person. When one person was seen coming from Jajardeval, the 'Mukhbir' pointed the appellant, who was carrying Charas in the bag. Seeing the police, the appellant tried to run away. The police party intercepted him and tried to conduct his search. On being asked, the person carrying Charas has disclosed his name as 'Manoj Sahi' and admitted that he had the Charas in his possession. The appellant was duly informed of his right of being searched before a Gazetted Officer or a Magistrate as required under Section 50 of the Act. The appellant said that he would like to be searched before a Magistrate. Thereafter, the appellant was taken before Rajiv Sah (PW1), S.D.M., Sadar in whose presence the search of the appellant was made. On conducting search of the appellant, about 1550 grams (1 kg. & 550 gm.) Charas was recovered from his possession, out of which, a packet of 100 gram Charas was sealed for the purpose of chemical examination and 1 kg. & 450 gms. Charas was sealed separately. The police prepared the recovery memo (Ex. Ka. 1) at the spot. On the basis of recovery, chick FIR (Ex. Ka. 6) was lodged at the police station and entry to that effect was made in the G. D. Thereafter, the accused, furd and recovered Charas was handed over to the police station. The recovered Charas was kept in the 'Malkhana' of the police station. The sample taken from the seized article was sent for chemical examination on 15-4-2004 and the same was received to the Chemical Examiner on 19-4-2004 and it was found to be Charas. The investigation was taken up as usual which culminated into the submission of the chargesheet.

3. After submission of the chargesheet, the accused appellant was committed to the Court of Sessions Judge, Pithoragarh for trial and the trial Court framed charge against the accused appellant under Section 20 N.D.P.S. Act. The accused appellant denied the charge levelled against him and claimed trial.

4. In order to prove its case, the prosecution examined as many as five witnesses. Rajiv Sah PW 1 is the S.D.M., Sadar in whose presence the recovery of Charas (contraband material) was made from the possession of appellant. PW2 is Constable Girish Chandra, who claims that on 15-4-2004 he took the sample of

Charas from the police station to the Chemical Examiner, Agra and it was handed over to the Chemical Examiner on 19-4-2004. PW3 is Laxman Singh Bisht, incharge of the police station. He arrested the appellant and also conducted search of the appellant. Constable Keshav Lal PW 4 is also the witness of arrest and search of the appellant. Anil PW 5 is the Investigating Officer of this case and after completing investigation he submitted the chargesheet against the appellant.

5. In the statement recorded under Section 313, Cr. P.C. the appellant denied the prosecution case and stated that he had been falsely implicated in this case. He further stated that the police took him from Raispul, Pithoragarh. The appellant further stated that he was not produced before the S.D.M. and no Charas-contraband material was recovered from his possession.

6. The learned trial Court after appreciation of the evidence found the appellant guilty under Section 20 N.D.P.S. Act and convicted and sentenced the appellant as mentioned above.

7. I have heard learned Counsel for the parties. I have also gone through the evidence and material on record.

8. The prosecution in support of its case examined Laxman Singh Bisht PW3 and Keshav Lal PW4. According to Laxman Singh Bisht PW3, he received information that the appellant was having Charas (contraband material), carrying it from Jajardeval towards Pithoragarh through Panda Barrier. The police party alongwith Laxman Singh Bisht PW3 went to the Panda Barrier. According to Laxman Singh Bisht PW3, he alongwith the raiding party reached the aforesaid forest barrier which was unmanned and no shop was open at that time. They reached there at 19.00 hours on the date of incident. They sat on the barrier chowki whereas the 'Mukhbir' was inside the barrier chowki. The appellant came from the side of Jajardeval and the Mukhbir pointed towards the appellant that he is the person who was carrying Charas (contraband material). The appellant was apprehended at the spot at 19.30 hours. He admitted that he was having Charas in his possession and stated that his search may be made in presence of the Magistrate. The accused appellant was immediately taken to SDM, Sadar in whose presence a search was made and a recovery of 1 kg. 550 gm. Charas was made from his

possession, out of which 100 gm. was sealed separately as a sample for the purpose of its chemical analysis, whereas 1 kg. 450 gms: was sealed separately. A search memo was prepared at the spot and the accused was taken to the police station. Laxman Singh Bisht PW3 has stated that he affixed his own seal on the sample of the seized article. Keshav Lal PW 4 stated in his evidence that after receiving the information with regard to the possession of Charas with the appellant, the In-charge of the Police Station Laxman Singh Bisht took him alongwith other police officials to Panda Barrier. When they reached the Panda Barrier, they saw the accused appellant coming from the opposite direction. They alighted from the jeep and apprehended the accused appellant at the spot and the appellant was apprised of his right of being searched in presence of the Magistrate or the Gazetted Officer. When he admitted that he was having Charas in his possession, the appellant was taken to Rajiv Sah PW 1, S.D.M., Sadar and in his presence, the search was conducted and a recovery was made. The recovered Charas was sealed accordingly and a furd was prepared.

9. The learned Counsel for the appellant contended that the evidence of the prosecution with regard to the arrest and search of the appellant is not credible and cogent. It was further contended that no independent witness was produced, though, such witnesses were available at the spot; the evidence of the prosecution is totally untrustworthy and conviction cannot be based on such evidence. The learned Counsel for the appellant further contended that Laxman Singh Bisht PW3, the Officer in-charge of the police station has admitted that the seal which was affixed on the sample of the seized article was of his name. It was further pointed that the sample of the seized article which was produced before the Chemical Examiner bears the name/seal of D. U. Singh. The Investigating Officer has also admitted in the cross-examination that at the time of receiving the said sample to the Analyst Office, at Agra the seal which was found on the sample of the seized article bears the seal of I.B. Singh. According to Girish Chandra PW2, the sample of the seized article was received by him on 15-4-2004 and he took it to the Chemical Examiner, Agra where he handed over the said sample of Charas on 19-4-2004. The said contraband was received by inordinate delay to the Chemical Examiner at Agra and there was no occasion to the constable to go to his house at Farukhabad during the period of taking this contraband to Agra. The

seal which was found on the contraband received at the Chemical Examiner, Agra and the seal which was made at the spot on the sample is totally different. It was contended by the learned Counsel for the appellant that the sample seized from the possession of the appellant was not sent for the chemical examination; the sample of the seal was not produced before the Court as to ascertain what was the correct position on the seized article produced before the Court.

10. Mr. Nandan Arya, learned A. G. A. refuted the contentions and supported the findings recorded by the trial Court.

11. The learned Counsel for the appellant has challenged the identity of the contraband article which is said to have been seized from the possession of the appellant and the sample of the contraband material which was sent to and examined by the Chemical Examiner, Agra. It is true that Girish Chandra PW2 has stated in his evidence that on 9-4-2004, bundle of sample of the contraband material was taken to the Court of SDM where the SDM has affixed his seal and sent it to the Chemical Examiner. At the time of dispatching the contraband material to the Chemical Examiner, it had the seal of SDM. Thereafter, the said contraband material was deposited in the police station. Girish Chandra PW2 had further deposed in his evidence that on 15-4-2004 he took the said sample of contraband material so that it may be handed over to the Chemical Examiner, Agra. He handed over the said sample to the Chemical Examiner, Agra on 19-4-2004 after a lapse of five days. The prosecution has not explained the delay in sending the said contraband material to the Chemical Examiner. The prosecution has not produced the copies of the GDs and the 'Malkhana' Register of the police station which shows the said contraband material was sent to the SDM; the same was received back to the police station with the seal of the SDM; the said Charas was deposited in the Malkhana; and it was taken by Girish Chandra PW2. If the prosecution theory is believed either it must bear the seal of Laxman Singh Bisht PW-3 In-charge of the police station or the seal of the SDM, Sadar. But, a different seal was found when the contraband material was found at Chemical Examiner's Office at Agra. The Chemical Examiner has categorically stated that the sample of contraband material which was received by him contained the seal of D.U. Singh, S.I. Now, this fact creates a doubt that the same article which was recovered from

the possession of the appellant and of which the sample was prepared was sent to the Chemical Examiner, Agra. It is further important to mention that the copy of the seal had not been produced before the Court at the time of the trial. In the case of Gurbax Singh v. State of Haryana 2001 CAR 204 : 2001 Cri LJ 1166, the Hon'ble Supreme Court has held as follows:

9. ...It is true that provisions of Sections 52 and 57 are directory. Violation of these provisions would not ipso facto violate the trial or conviction. However, I.O. cannot totally ignore these provisions and such failure will have a bearing on appreciation of evidence regarding the arrest of the accused or seizure of the article. In the present case. I.O. has admitted that the seal which was affixed on the muddamal article was handed over to the witness P.W. 1 and was kept with him for 10 days. He has also admitted that the muddamal parcels were not sealed by the officer incharge of the police station as required under Section 55 of the N.P.P.S. Act. The prosecution has not led any evidence whether the Chemical Analyser received the sample with proper intact seals. It creates a doubt whether the same sample was sent to the Chemical Analyser.

12. Apart from this, there are circumstances which lead a doubt about the credibility of the witnesses. Accodinig to Laxman Singh Bisht PW3, when he received an information at the police station he took the 'Mukhbir' and other police personnel to the place of incident. They reached at Panda Barrier at 19.00 hours and kept waited for half an hour. Thereafter, the accused appellant came from the opposite direction. It is also in the evidence that the police party remained sitting at the forest barrier chowki and the informer was inside the forest check post. Thus, it is apparent that they remained there for half an hour and thereafter the arrest was made. Keshav Lal PW4, who is a witness of arrest of the appellant, has stated that after receiving the information, they proceeded to the place of occurrence and the Mukhbir met them twenty steps before the place of incident. When they reached near Panda Barrier, they saw the accused appellant coming from the opposite direction. They alighted from the jeep and apprehended the accused appellant.

It is also pertinent to mention here that the recovery memo did not indicate as to why the independent witnesses could not be procured for the arrest and seizure of

the contraband material when the police had received prior information. If the police would not have received the witnesses for the arrest and seizure, they could have very well mentioned this fact in the arrest and recovery memo. This omission on the part of the arresting and recovery officer further leads an inference that the police did not try to get the independent witness for the arrest and seizure. If this fact would have been mentioned in the recovery memo, the appreciation of the evidence on this point would have been otherwise. Merely mentioning this fact at the time of evidence can only be an improvement during the course of the trial. The investigating Officer has categorically stated that the presence of Hem Chandra Joshi and Navin Chandra Joshi, who were said to be present at the barrier at the relevant time, were interrogated by him during investigation. The fact that their evidence was not taken at the time of the arrest also creates a doubt about the recovery also. It is also pertinent to mention here that non-production or not taking of the independent witnesses is not always fatal to the prosecution case. It depends upon the facts and circumstances of each case. In the case in hand coupled with other factors, this fact creates a doubt about the arrest of the appellant. The provisions of N.D.P.S. Act are very stringent and if the law is stringent it is obligatory on the part of the prosecution to prove all the formalities as provided under the Act. As I have pointed out that it is not established that the same article which was recovered from the possession of the appellant was sent to the Chemical Examiner coupled with the other circumstances as mentioned above, thus, the prosecution story of arrest and recovery becomes doubtful. The prosecution has failed to prove that the same article which was recovered from the possession of the appellant was produced before the Court.

13. In view of the foregoing discussion and on the basis of the aforesaid evidence, I am of view that it would not be safe to convict the appellant and the appellant is entitled to get the benefit of doubt. Therefore, the prosecution has not established the guilt beyond any reasonable doubt against the appellant. I find that the learned trial Court has erred in convicting and sentencing the appellant. Hence, the appeal is allowed and the conviction and sentence against the appellant awarded by the trial Court are set aside. The appellant is acquitted from the charge levelled against him. He is in jail. He shall be released forthwith, if not wanted in any other case. His bail bonds are cancelled and sureties discharged.

14. Let the lower Court record be sent Back to the Court concerned. The compliance report be submitted within a period of three months.

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