

Ramdhari Shah Vs. State

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Court : Delhi

Decided On : Jul-03-2015

Judge : Indermeet Kaur

Appellant : Ramdhari Shah

Respondent : State

Judgement :

\$~R-21 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of judgment:

03. 7.2015 CRL.A. 786/2012 RAMDHARI SHAH Through Appellant Mr.Saurabh Kansal, Advocate. versus STATE Respondent Through Ms.Kusum Dhalla, APP for the State. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

(oral) 1. This appeal has been filed against the impugned judgment and order of sentence passed by the Sessions Judge dated 24.01.2012 wherein the appellant stood convicted under Section 20(C) of the Narcotics Drugs and Psychotropic Substances Act (NDPS Act). He had been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.1,00,000/- in default to undergo RI for a period of five months.

2. The version of the prosecution is that on 10.02.2009 SI Rajinder Dabas (PW-3) posted at Old Delhi Railway station being on patrolling duty at the DFND Gate

Platform No.1A, ODRS along with Head Constable Bijender Singh (PW-1), Constable Bharat (PW-4) and Constable (RPF) Parvinder Kumar (PW-7) were present and were checking passengers. At about 1.00 p.m. four persons came from the platform near the gate. Out of these four persons one of them (appellant) had two shoulder bags while the others had one shoulder bag each. On seeing the police party the aforementioned persons started stepping back from there. The police party got suspicious and apprehended them.

3. PW-3 caught the appellant who was having two bags. His name was revealed as Ramdhari. PW-1 caught co-accused Lakhi Chand. PW-4 caught co-accused Badri Sahni and PW-7 caught the 4th accused Ganesh Shah. They were all questioned about the contents of their bags but they did not give satisfactory reply. Their bags were checked physically and on checking the same ganja (contraband) was recovered in all of them in a polythene wrapped in newspapers.

4. Further version of the prosecution is that passersbys were asked to join investigation but none agreed to do so. The concerned SHO was informed. Notice under Section 50 of the NDPS Act was served upon each of the accused persons. The notice and the reply were collectively proved as Ex.PW-1/A to Ex.PW-1/H. The two bags recovered from the appellant contained 12 kg of ganja each. The single bag from each of the three co-accused contained 15 kg of ganja. A total recovery of 69 kg ganja was thus made from all the four accused. Separate samples each of kg. were taken out from the each five bags and sealed with the seal of RD. They were dispatched to the Malkhana and the entries in Register No.19 were proved by Head Constable Brham Pal (PW-5). Head Constable Raj Kumar (PW-10) had collected the sealed samples and deposited the same in the FSL. The FSL had opined the samples to be positive for the contraband (ganja).

5. The charge sheet was filed by SI Suresh Kumar (PW-9). The prosecution examined 10 witnesses of whom PW-1, PW-3, PW-4 and PW-7 were the recovery witnesses. PW-3 was the first investigating officer and as noted supra the charge sheet was filed by the second investigating officer i.e. PW-9.

6. The present appellant had been convicted under Section 20(C) of the NDPS Act and had been sentenced to undergo RI for a period of 10 years and to pay a fine

of Rs.1,00,000/-, in default to undergo RI for 5 months. The other three co-accused had been convicted under Section 20(B) of the NDPS and had been sentenced to undergo RI for 5 years and to pay a fine of Rs.50,000/-, in default, to undergo RI for 3 months.

7. This Court has been informed that out of the four co-accused two accused have already been released on the period already having been undergone by them i.e. co-accused Lakhi Chand Paswan and Badari Shahni by separate judgments dated 27.01.2015 and 30.4.2015.

8. All the other three co-accused (apart from the appellant) had been sentenced to undergo RI for a period of 5 years having been found to be in possession of the mid quantity of contraband. Their period of incarceration was 5 years each. The present appellant was found to be in possession of a commercial quantity and had thus been sentenced for a greater period i.e. for a period of 10 years.

9. The sole argument advanced by the learned counsel for the appellant is that all the aforementioned persons were in a conspiracy and had in terms of a joint agreement agreed to come to Delhi from Nepal to sell their contraband. It was a joint meeting of the minds wherein they had agreed to do this illegal act by illegal means. The separate quantities of the contraband recovered from each of the accused should not have weighed in the mind of the Sessions Judge in convicting and sentencing the accused persons as the evidence adduced before the trial judge clearly reflected that all the accused persons had the common mental state i.e. the agreement to commit a crime and as such all conspirators should have been liable for the crimes of one another.

10. Attention has been drawn to the provisions of Section 120 B of the IPC. It reads herein as under:

120. B. Punishment of criminal conspiracy- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a terms of two years or upwards, shall, where no express provisions is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever

is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

11. This Section applies to all persons who are a member of a conspiracy during the continuance of an illegal act. The gist of the offence is the agreement itself from which the act of conspiracy is to be inferred. Anyone of those members acting in furtherance of the common design would be guilty of this offence.

12. Learned counsel for the petitioner submits that the total quantity of the ganja recovered from all the four persons was 69 kg. and merely because the appellant was carrying two bags and the others were carrying one bag each would not tantamount to the conclusion that the petitioner was guilty of holding a commercial quantity and the others were guilty of holding a mid quantity of ganja. Submission being that figure of 69 kg. should have been sub-divided into four and the result would be that each of the co-accused would be in possession of 17.5 kg. of ganja which would encompass all the accused within the mid quantity bracket and thus the conviction of the appellant under Section 20(C) of the NDPS Act is unfounded. At best the conviction could have been under Section 20 (B) of the NDPS.

13. There is force in this submission of the learned counsel for the appellant. In a case of conspiracy an agreement between the conspirators cannot generally be overtly proved but it is inferred from the established facts in the case. The connection has to be established with the conspiracy and the rationale of the conspiracy is that the required objective manifestation of disposition to criminality is provided by the act of agreement. The evidence adduced before the Court i.e. the testimony of PW-1, PW-3, PW-4 and PW-7 all of whom consistently stated that all the accused persons were coming together from the platform side towards the gate; three of the four persons were carrying one shoulder bag each and the fourth person i.e. the appellant had two shoulder bags. The bags were identical and they had same kind of gold inscription embossed upon them. The bags were of same size. The contraband i.e. the ganja recovered from the bags also reflected that it was wrapped in the same fashion i.e. in the polythene which was wrapped with newspapers and then kept in the bags. Apart from the versions of the aforementioned

witnesses the disclosure statement of the appellant and other co-accused also established that the accused persons who were all residents of Nepal on the asking of one Mahadevi and Ganeshi (both of whom were residents of West Bengal) had agreed to sell their flowers of ganja (grown widely in Nepal) in Delhi and in furtherance of this act they had all agreed to come Delhi to sell this ganja.

14. A confession of a co-accused is a piece of evidence within the meaning of Section 30 of the Indian Evidence Act and can be looked into for the purposes of corroboration to corroborate the other independent evidence which has been gathered by the prosecution all of which established that the accused persons were in conspiracy with one another to commit this illegal act and which was the act of the sale of ganja which they had brought from their hometown in Nepal to Delhi. All of them had come together with a common purpose i.e. the intent to sell this illegal contraband in Delhi. Thus, it was a clear case of conspiracy.

15. As noted supra the other co-accused have been convicted for the lesser offence i.e. for the offence under Section 20 (B) of the NDPS and had been sentenced to undergo RI for a substantive period of 5 years each of whom Lakhi Chand Paswan and Badari Shahni had already been let off on the period already undergone by them. Each of them had undergone almost 5 years of sentence. The present appellant is also entitled to the same benefit.

16. Nominal roll of the appellant reflects that as on 10.02.2014 he had undergone sentence of 5 years meaning thereby that as on date he has undergone incarceration of almost above 6 years. Accordingly, he be released on the period already undergone by him.

17. Appeal is disposed of in the above terms.

18. Copy of this order be sent to Jail Superintendent for intimation and compliance. INDERMEET KAUR, J JULY03 2015 ndn/m

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