

Mohd. Shamim Vs. the State

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Court : Delhi

Decided On : Oct-04-1989

Reported in : 1990CriLJ2521

Judge : P.K. Bahri, J.

Acts : Narcotics Drugs and Psychotropic Substances Act - Sections 18, 21 and 55

Appeal No. : Criminal Appeal No. 30 of 1989

Appellant : Mohd. Shamim

Respondent : The State

Judgement :

1. This appeal has been brought against judgment dated January 12, 1989 of an Additional Session Judge, New Delhi by which he has convicted the appellant of offence punishable under Sections 18 and 21 N.D.P.S. Act and against the subsequent order dated January 16, 1989 by which the appellant was sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of rupees one lac and in default of payment of fine, to further undergo rigorous imprisonment for two years.

2. The facts of the case in brief are that PW 6 Rajinder Bakshi, Sub Inspector who was then in charge of Police Post Amar Colony on May 21, 1987 was said to be

patrolling the area, accompanied by constables Jeet Ram, Lal Wahid Khan, Kishan Kumar, Roshan Lal and Govind Ram; and at about 5.30 p.m. when they reached near C-Block Market, East of Kailash that he received a secret information to the effect that two persons having opium and charas in their possession would be coming from the Village Garhi side and would be proceeding towards Okhla through Block A Market, East of Kailash. Thus he organized the raiding party comprising of the police officials already with him and in the meantime PW 6 Sushil Kumar who was then stated to be working as S.H.O. of Police Station Lajpat Nagar had also reached in jeep by chance at that spot. Thereafter they proceeded to the A Block Market and that they had made request to some 8 or 10 persons who were passing by to join in the raiding party but none of them agreed. A Nakabandi was made at the culvert near A Block Market while the jeep of the S.H.O. was hidden at some place. At about 6.15 p.m. on the pointing out by the secret informer the appellant and one Abrar Khan were seen coming and they were carrying a cloth bag each in their right hands and they were apprehended. It was disclosed to the appellant that police had secret information of his being in possession of contraband and an offer was given of him that if he so desired his personal search could be taken in the presence of gazetted officer or a Magistrate. It is stated that on appellant declining the said offer, the said bag was searched in which opium was found which was weighed and it came to be 2 Kg. and 300 Gms. A sample of 100 Gms. was taken and the sample and the remaining opium were converted into separated sealed parcels by affixing the seal of APS and of SKB. SKB belonged to the S.H.O. Necessary form was also filled in on which the specimen of the seals were affixed. The opium and the sample were taken into possession. The opium seal was handed over to constable Jeet Ram after use by the I.O. Rukka Ex. PW 5/B was prepared and was sent through constable Roshan Lal on the basis of which the case was registered. A site plan Ex. PW 6/A was prepared at the spot. A personal search memo of the appellant Ex. PW 6/B was also prepared.

3. Later on the sample was got sent to C.F.S.L. from the Malkhana and the report Ex. PW 6/C was received showing that the sample was of opium. In support of the charge, PW 1 Inspector Sushil Kumar, PW 2 Constable Jeet Ram, PW 3 Constable Lal Singh, PW 6 S.I. Rajinder Bakshi appeared for proving the material

facts of the case. PW 4 Head Constable Abdul Wahid was working as Malkhana Maharrar at the relevant time and he proved the entries from the Malkhana Register, copy of which is Ex. PW 4/A and he also deposed that as long as the case property remained in the Malkhana, no one tampered with the same. PW 5 Head Constable Rajinder Singh was working as Duty Officer at the relevant time and he scribed the FIR, carbon copy of which is Ex. PW 5/A. The learned Additional Sessions Judge has believed the prosecution case and thus convicted and sentenced the appellant.

4. The learned counsel for the appellant has argued that the present case bristles with material contradictions in the statements of the witnesses who were all police officials and certain provisions of N.D.P.S. Act have been given go by and thus the conviction of the appellant is not well based.

5. It is true that as even opined by the Additional Sessions Judge in his judgment that public persons unfortunately do not come forward to become witnesses in policed cases as they want to avoid unnecessary harassment at the hands of the police. However, this fact that public witnesses, if approached, decline to join the raids organized by the police cannot be taken as a gospel truth and cannot be sued as a handle by the I.O. for not making any sincere efforts in all cases to join the public witnesses. It is admitted by all the police officials that at Block C Market, East of Kailash where the secret information was received and on the way to Block A, many shops and offices and houses are located and witnesses were available at those places in plenty. Inspector Sushil Kumar, PW 1 stated that only 8 or 10 public persons were asked to join the raiding party at the place where he had met the raiding party at Block C. He did not say that any other effort was made while on the way to Block A or even at Block A for joining any public witnesses. He did not say that any residents of the houses, shopkeepers or persons present in the offices were requested to join the raid. It is true that there might not be much time available for the raiding party to make any concerted efforts to join the public witnesses but it must be kept in view that raiding party comprised of about 9 to 10 persons, much time would not have been wasted if sincere efforts have been made by the members of the raiding party in joining the public witnesses at least by making in requests to the shopkeepers or the people present in the offices at

the point where the secret information was received or on the way to the spot or at the spot itself. If we go by the statement of PW 1 who was the most responsible officer, it is evidence that no sincere effort was made for joining public witnesses. No reasons have been give by him as to why no effort was made to join shopkeepers or the other persons present in the houses and the officers for joining the raid.

6. PW 2 constable Jeet Ram on the other hand stated that a few persons were asked to join the raiding party only at Block A. So, he has contradicted the testimony of PW 1 on this aspect. Lal Singh, PW 3 stated that only 8 or 10 public persons at the said culvert were requested to join which is again in contradiction with the statement of PW 1. PW 6, Sub Inspector Rajinder Bakshi who was examined after a few months and who must have by now realized the discrepancies appearing in this respect of the case, had tried to make an improvement by stating that neither the efforts were made to join the public witnesses at the point where secret information was received or at the point the appellant was apprehended but such efforts were made while proceeding from Block C to Block A. So, he has come up with a new story in respect of this aspect of the case.

7. Besides the aforesaid discrepancies appearing on a very vital aspect of the case as to the efforts made regarding joining of public witnesses, there has also appeared a few more vital discrepancies which throw a lot of doubt regarding the prosecution version. PW 1 stated that all the members of the raiding party came to the spot form Market C Block in his jeep whereas PW 3 Lal Singh deposed that the police officials who were with Sub-Inspector Rajinder Bakshi had come to the spot on foot and Inspector Sushil Kumar came to Block A in his jeep. According to PW 1 Inspector Sushil Kumar two chairs and a stool were brought to the spot so that the writing work could be done by the I.O. whereas PW 3 stated that no such furniture was brought to the spot and whereas PW 6 stated that only one stool was brought to the spot. PW 1, PW 2 and PW 3 stated that the writing work was done while being present at the said culvert on the other hand, PW 6 I.O. stated that writing work was not done at the said culvert but it was done underneath electric pole which was at a distance of about 20 to 30 years from the said culvert.

According to PW 2, one constable Wahid Khan had gone and brought the scales for weighing the opium whereas constable Lal Singh stated that he had gone and brought the scales. On the other hand I.O. stated that the scales and the stool were brought by Wahid Khan, constable.

8. It is to be mentioned here that in the absence of any public witness being joined, the statements of police officials are required to be scrutinized with due care and caution in order to see whether the offence is brought home to the appellant beyond reasonable doubts. The discrepancies mentioned above would not have appeared in the statements of the above witnesses only on account of lapse of time. The appellant had no other way to show that a false case has been foisted on him except to show that the police officials are not telling the truth when they are making such discrepant statements on material aspects of the case. The material aspects of the case were as to how the secret information was received and raiding party was formed and what efforts were made to join the public witnesses and in what manner the proceeding were carried out at the spot. On all these aspects, discrepant statements had come from the statements of these important witnesses. So, I do not agree with the view expressed by the Additional Sessions Judge that all these discrepancies do not go to the root of the matter in the present case. It is to be mentioned at this stage that in law the seal of the S.H.O. was liable to be put on the case property. PW 1 claimed to be functioning as S.H.O. on that particular day. This fact was challenged in cross-examination but nothing was brought on record to show that in fact PW 1 was functioning as S.H.O. on that particular day. It is to be mentioned that Head Constable Rajinder Singh, PW 1 who was working as Duty Officer on that day in the Police Station, in cross-examination stated that S.H.O. D. D. Sharma was present in the Police Station at the time the FIR was recorded. There cannot be two SHOs functioning in the Police Station at the same time. PW 6, S.I. Rajinder Bakshi stated that Shri D. D. Sharma was the SHO of the police station at the relevant time but he was on leave on that particular day. No effort has been made by the prosecution to bring any evidence on record to show that in fact SHO D. D. Sharma was on leave and testimony of PW 5, Rajinder Singh in that respect is not correct that D. D. Sharma was present in the Police Station at the time the FIR was recorded. So, it is to be held that in fact SHO D. D. Sharma was functioning and PW 1 could not have

been designated as a S.H.O. so that the case property could be sealed by PW 1. Admittedly the case property was never produced before D. D. Sharma S. H. O. for getting the same as sealed as required by Section 55 of N.D.P.S. Act. So, all these facts lead me to hold that the prosecution had failed to bring home the offence to the appellant and there appears a lingering doubt about the truthfulness of the story of the prosecution. The mere fact that huge quantity of opium has been shown to have been recovered from the appellant does not entitle this Court to ignore the vital discrepancies already noticed above appearing in the statements of the witnesses which throw lot of doubt regarding the case of the prosecution on merits.

9. In view of my above discussion, I allow this appeal, set aside conviction and sentences of the appellant and I acquit the appellant of the charge.

10. Appeal allowed.