

State Vs. Sant Kumar

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Court : Delhi

Decided On : Feb-19-2003

Reported in : 2003IIAD(Delhi)341; 2003(2)Crimes62; 103(2003)DLT334; 2003(67)DRJ340; 2003(87)ECC45; 2003(1)JCC358

Judge : Dalveer Bhandari and; H.R. Malhotra, JJ.

Acts : [Narcotic Drugs And Psychotropic Substances Act 1985](#) - Sections 18, 42(1) and 42(2); Code of Criminal Procedure (CrPC) - Sections 313 and 395

Appeal No. : Criminal Appeal No. 179 of 1996 with Criminal Reference No. 1 of 1996

Appellant : State

Respondent : Sant Kumar

Advocate for Def. : Amit Sharma, Adv.

Advocate for Pet/Ap. : Akshay Bipin, Adv

Judgement :

Dalveer Bhandari, J.

1. By this judgment we propose to dispose of Criminal Appeal No. 179 of 1996 and Criminal Reference No. 1 of 1996. Both the appeal and reference arise out of the

Sessions Case No. 21 of 1994, State vs. Sant Kumar.

2. Brief facts necessary to dispose of the appeal and the reference are as follows.

3. According to the prosecution Inspector Ram Kishan, in charge of Special Staff, New Delhi Range had a secret information that a gang of criminals hailing from Rajasthan was engaged in illegal trade of supplying opium in Delhi. On 28.4.1992 secret information was received that jeep No. RJP-5326 was scheduled to arrive at Upper Ridge Road, Delhi for transportation of opium. The further prosecution story is that Inspector Ram Kishan informed his superiors about this information and requested R K Jha, Assistant Commissioner of Police (ACP) Headquarter, New Delhi District to join the raiding party. One public witness, Rattan Bahadur Chauhan, resident of Darshanpura, Gandhi Nagar was summoned in the office of Special Staff, New Delhi Range at Preet Vihar and was persuaded to join the raiding party by Inspector Ram Kishan. The raiding party consisting of Inspector Ram Kishan, Sub Inspector S.K. Giri, Assistant Sub Inspector Bakhtawar Singh, Head Constable Yashbir Singh, Constables Narender Singh, Rajeshwar, Suresh Chand, Jagdish Parshad and Partap Singh left for Upper Ridge Road in government vehicle No. DL-1U-2002 driven by driver Constable Baljit Singh. When the raiding party reached Shankar Road round about at about 4.20 p.m ACP R.K. Jha also joined them. A picket was laid near the round about of Mandir Lane and Shankar Road. The jeep No. RJP-5326 as scheduled came from the side of Dhaula Kuan at about 5.30 p.m and took a turn towards Mandir Lane. Besides the driver one person was sitting in the front seat. The jeep was signaled to stop by the police party, but the driver accelerated the speed of the jeep and out of nervousness the jeep dashed against a tree behind the petrol pump, Mandir Lane. Thereafter, the driver ran towards the jungle, but the respondent Sant Kumar who was sitting by the side of the driver seat was overpowered. Shiv Parshad of Village Bharsora in District Jhunjhunu was the driver of the said vehicle. This information was gathered from the documents found in the jeep.

4. The further story of the prosecution is that Assistant Commissioner of Police Jha introduced himself and other members of the raiding party and the public witness to the respondent Sant Kumar and apprised him of the secret information

about narcotic drugs. Narcotic drug was not found on his person. On search of jeep, four plastic thelis containing about 47.5 kgs suspected to be opium were recovered. Four samples were drawn and converted into small packets. These packets were then sealed with the seal 'KS' and were given to the public witness, Rattan Bahadur Chauhan. The case property was seized vide recovery memo Ex. PW 5/A, jeep No. RJP-5326 and the documents were seized under a separate recovery memo EX. PW5/B. Ruqqa Ex PW 2/C was sent to the Police Station, Mandir Marg for registering a case under Section 18 of NDPS Act against the respondent Sant Kumar and a case under Section 25 of the NDPS Act against the absconding driver, Shiv Parshad. Head Constable Yashbir Singh was entrusted with the sealed case property and samples along with the CFSL form for producing before the SHO for depositing these articles in the malkhana after affixing his seal. SHO of Mandir Marg before whom the case property was produced is alleged to have affixed his seal T.P.S and deposited in the malkhana of the police station.

5. The respondent pleaded not guilty and claimed trial. In his statement under Section 313 of the Code of Criminal Procedure, the respondent denied the prosecution case in toto and took a specific plea that he has been falsely implicated in this case. He further stated that on 25.4.1992 when he was returning to his village of Jhakro Ka Bas in District Jhunjhunu he asked for a lift from a privately run taxi jeep on Jhunjhunu-Jhakro Ka Bas Highway at about 6 p.m. On his signal the jeep which already had 5-6 passengers stopped. He confirmed the fare with the driver and got into the jeep. After traveling for some distance a quarrel ensued between the driver and other passengers including one Sardarjee, who appeared as a prosecution witness against him as ASI Bakhtawar Singh. At that time he learnt the name of the driver as Shiv Parshad. During the melee, the driver got down from the jeep and ran away. The other passengers took control of the jeep and brought it to Delhi without permitting him to get down. After 2-3 days of illegal custody and physical torture he was falsely implicated in this case. He denied that he had anything to do with the narcotic drugs which have been recovered from the jeep.

6. The learned counsel appearing for the respondent submitted before the learned Additional Sessions Judge that an innocent agriculturist has been falsely implicated by the officers of the Delhi Police.

7. The learned counsel for the respondent submitted that the respondent remained incarcerated for more than 3-1/2 years illegally at the hands of Inspector Ram Kishan with the connivance of ACP R.K Jha and Inspector Suresh Dabbas and the respondent be granted exemplary compensation to be recovered from the police officials.

8. The prosecution has examined 12 witnesses in support of its case. Suresh Kumar Gupta, PW1, was LDC in the District Transport Office. He brought the relevant record regarding the ownership of Jeep No. RJP 5236 used for smuggling of opium in this case. Devraj Singh PW2 was posted as Duty Officer in Police Station Mandir Marg. He brought the rukka signed by Assistant Sub Inspector Bakhtawar Singh, PW6. On the basis of rukka FIR was recorded. Head Constable Surat Singh PW3 was working as MHCM, Police Station Mandir Marg. According to him SHO Tej Pal Singh, Inspector deposited with him four pulling has of case property and those four sample pulling has along with the CFSL form which were duly sealed with the seals of K.S and T.P.S. Inspector Tejpai Singh, PW 4 stated that Head Constable Jasbir Singh had produced before him 8 pulling has sealed with the seal of KS along with CFSL form bearing specimen of the same seal. He further stated that he had put the seal of TPS on all the parcels and on CFSL form and thereafter deposited the case property with the Malkhana Moharrar.

9. R.K. Jha, Assistant Commissioner of Police (ACP) Headquarters, PW5 stated that Inspector Ram Kishan Malik informed him that two persons would be coming on Upper Ridge Road in Jeep No. RJP 5326 in the evening time. On the request of Inspector Ram Kishan Malik he reached there at 4.15 p.m. The raiding party was headed by Inspector Ram Kishan who was present at that time. He stated that at about 5.30 p.m the aforementioned jeep came from the side of Dhaula Kuan towards Mandir Lane. A signal for stopping was given but the driver did not stop the jeep. However, the jeep dashed against a tree. The driver of the jeep escaped towards the jungle. The accused (respondent herein) was overpowered.

He asked the accused Sant Kumar to take search of ASI Bakhtawar Singh. He took search of ASI Bakhtawar Singh and thereafter he asked ASI Bakhtawar Singh to search the jeep. ASI Bakhtawar Singh found four rexine bags, two lying underneath the front side on which the driver and accused were sitting and one between the clutch, accelerator and foot rest of the driver and the fourth one was lying on the foot rest of the accused who was sitting by the side of driver. All the bags contained opium. Four samples of 100 grams each were taken out from each of the four bags. He stated that they did not make any attempt to request any public witness of the area to join the raiding party. He stated that he did not know when and how the public witness , Rattan Bahadur Chauhan joined the raiding party. He also stated that besides himself the raiding party consisted of Inspector Ram Kishan Malik, ASI Bakhtawar Singh, SI S.K. Giri, HC Yashbir Singh, Constable Jagdish, Constable Partap, three more constables and public witness Rattan Bahadur Chauhan. He stated that Suresh Dabbas, who was posted in the Special Staff, New Delhi District was not a member of the raiding party of this case. He had casually come at the spot. As per rules, the recovery memo Ex PW5/A should have been prepared by the Investigating Officer, ASI Bakhtawar Singh who was being supervised by Inspector Ram Kishan. But in practice the recovery memo is also recorded by any member of the raiding party under the supervision of the investigating officer. He stated hat the recovery memo was prepared at the spot, but he cannot say who had written it. He also stated that he did not mention about Suresh Dabbas because he was not a member of the raiding party.

10. ASI Bakhtawar Singh PW6 was posted in Special Staff, New Delhi. In the cross examination he stated and the relevant portion reads as under:

'It is correct to suggest that entire investigation was done by Inspector Ram Kishan. However as a subordinate I was asked to sign on the places where an i.e is required to sign.'

11. Constable Jagdish Parshad, PW7 was posted in Special Staff. He took four samples of this case duly sealed with the seal of KS and TPS along with CFSL form bearing the specimen seals mentioned above for depositing in the office of

the CFSL. He deposited the same and handed over the receipt to the MHCM. He also stated that so long as the samples remained with him nobody tampered with them.

12. Head Constable Yashvir Singh PW8 was posted in the Special Staff, East District. He stated that the pulling has were sealed with the seal of 'K.S' and the SHO had affixed his seal of 'T.P.S' at the police station. He stated in cross examination that it is incorrect to suggest that the seal of 'K.S' does not belong to any member of the raiding party.

13. Inspector Ram Kishan Malik, PW9 was posted as Inspector, Special Staff. He stated that he had received a secret information that Jeep No. RJP 5326 would pass through Ridge Road by the side of Dhaula Kuan in which some narcotic substance was placed. He also stated that the police officials of New Delhi District had organized a raiding party. He further stated in the cross examination that he did not know who had written Ex PW5/A, rukka. However, he had signed it at point X. Regarding the secret information it is stated that he had informed the police officials of New Delhi District. But in his statement it is not indicated that the secret information was communicated in writing to the senior officials.

14. Inspector Suresh Dabbas, appeared as PW 10. It may be pertinent to mention that Suresh Dabbas was not a witness in the case, but when the trial court found that the recovery memo appeared to be in the writing of Suresh Dabbas, then he was summoned by the Court. According to him under the direction of Inspector Gurcharan Singh, Inspector of Special Staff under whom he was posted as a Sub Inspector, had prepared the charge sheet of this case after completing proceedings under Sections 82 & 83 of the Cr.P.C against the absconding accused Shiv Parshad. Suresh Dabbas admitted that the recovery memo Ex PW5/A was in his hand writing. All the prosecution witnesses admitted that Suresh Dabbas was not a member of the raiding party.

15. Inspector Gurcharan Singh, PW 11 was the SHO, New Delhi Range. Under his instructions Suresh Dabbas, PW 10 had prepared the rukka, though he was not a member of the raiding party.

16. It may be pertinent to mention that the respondent Sant Kumar in his statement under Section 313 Cr.P.C stated that he had been falsely implicated in this case. He also stated that when he was returning to his village on 25.4.1992 he waved his hand and stopped a private taxi (jeep) around 6 p.m. on Jhunjhunu Jhakro Ka Bass Highway. The jeep which already had 5/6 passengers including one Sardarji, ASI Bakhtawar Singh stopped, (who later appeared in the Court and falsely deposed against the respondent accused). Sant Kumar stated that he had been falsely implicated in this case and he had suffered enormously.

17. The learned Additional Sessions Judge after examining the entire evidence on record came to a definite finding that the prosecution case suffers from material contradictions leading to a strong belief that this helpless innocent villager was falsely implicated by the Inspector Ram Kishan with the active connivance of Suresh Dabbas and with the support of ACP R.K Jha. The learned Additional Sessions Judge while acquitting the respondent Sant Kumar also directed that the State must be made to pay compensation of Rs.2,50,000/- to be recovered from the erring police officials. The learned Additional Sessions Judge has also made a reference to this Court under Section 395 of the Code of Criminal Procedure.

18. The learned Additional Sessions Judge also came to the conclusion that in this case there is no compliance of Section 42(2) of the NDPS Act.

19. According to Ruqqa Ex. PW 2/C Inspector Ram Kishan had prior information that a party of Rajasthan was engaged in narcotic trade of supplying opium in Delhi, who would be coming to Delhi for that purpose. This secret information was received around 1.30 p.m on 28.4.1992 in his Preet Vihar office. It also records that the office of New Delhi District was informed about this message and R.K. Jha, ACP, Headquarters, New Delhi District was requested to join the raiding party. Neither in the ruqqa it had been mentioned that this information was reduced in writing nor it has been mentioned that the superior officers of the Inspector in charge were given information in writing. No such writing has been produced on record or proved. The Court observed that the mandatory provisions of Section 42(1) and 42(2) of the NDPS Act have been violated.

20. The Court held that in this case where false implication has been alleged, it was mandatory to cross check the actions of Inspector Ram Kishan in organising this raid. The learned Additional Sessions Judge observed that the place of occurrence at Mandir Lane has been shown only to create jurisdiction of the New Delhi District, which could only empower the police party of this case to show conducting of alleged raid of this case. The Court came to the conclusion that the prosecution story is totally improbable especially when in the site plan there are additions regarding foot note number 3 in different ink indicating the place from where the driver had allegedly escaped. However, the point mark C mentioned in this foot note is not mentioned anywhere in the site plan because there were only two notes mark A and B in the original site plan. Interpolation of the foot note mark 'C' indicating the alleged escape of driver is also suggestive of the fact that when the site plan Ex PW 6/A was initially prepared, the factum of the driver being Shiv Kumar and his escaping was not in the scheme of things planned by the raiding party, otherwise it was to be a most crucial foot note showing that the driver had escaped.

21. The learned Additional Sessions Judge also suspected the prosecution version on the ground of non-association of the police officers of other police stations. The Court observed that the raiding party ought to have joined the police officials of the North and the South Districts. This lapse in the prosecution version also affects the credibility of the prosecution version.

22. The Court further observed that deliberate recording of the false registration number of the jeep is also suggestive of foul play and indicative of stage managing of the prosecution story for implicating the accused.

23. The learned Additional Sessions Judge also observed that it has been conceded by all the witnesses including ACP Jha that no public witness was requested or joined near Shankar Road round about, where the picket was laid at about 4.20 p.m, that is more than one hour before the jeep in question was allegedly intercepted.

24. In the impugned judgment it is observed that all the parcels were found with broken seals when they were produced in Court. Similarly Inspector Ram Kishan

Malik. PW9 did not support the prosecution version on all material aspects. According to him the driver had tried to escape towards Mandir Lane which means it was the original plan of the driver. If this was so, he had the intention to escape after having seen the police party, it was much easy for him to have escaped on the Shankar Road going towards Rajender Nagar or towards Upper Ridge Road going towards Karol Bagh, Pusa Road. According to Ram Kishan Malik, four plastic thelis were found placed in front of the seat of accused Sant Kumar who was sitting by the side of the driver. The Court observed that there cannot be so many material contradictions and deviations if there was any truth in the prosecution story and if the incident was not stage managed.

25. The Court also observed that the prosecution version of the driver hitting the jeep against the tree and running away was also concocted. The prosecution case is that the driver of the jeep had lost control of the jeep and had dashed against a tree before escaping towards the jungle.

26. The Court observed that admittedly no mechanical inspection of the vehicle was got carried out. The jeep was not towed with the help of crane for being deposited in the malkhana. According to ACP Jha, a minor dent was caused to the jeep due to its striking against the tree, but no such mention is made in the ruqqa or in the recovery memo. The Court observed that this part of the story has also been concocted to fit in the story of escape of driver Shiv Parshad not on the Jhunjhunu-Jhakhro Ka Bas Road as claimed by the accused but from the alleged place of occurrence on Mandir Lane in New Delhi as claimed by the investigating agency.

27. According to the learned Additional Sessions Judge the fact that the scene of alleged incident was not photographed also creates suspicion. The Court also observed that the public witness summoned to Preet Vihar office of the special staff was not produced despite summons having been given to both ASI Bakhtawar Singh and Inspector Ram Kishan. Both of them stated that they were not in a position to produce the witness. The Court observed that it is not certain whether the witness is a fictitious person or somebody had signed in his name and in the circumstances an adverse inference has to be drawn against the

prosecution.

28. The Court also observed that the prosecution has not taken serious steps to arrest the so called king pin Shiv Parshad, who was not only the driver but also the owner of the jeep.

29. The Court further observed that not even a single official with initials 'K.S' was a member of the alleged raiding party and when the four gunny bags purported to have been sealed with seal K.S were produced in the Court the seals on all of them were found to be in broken condition.

30. The Court observed that in normal course if for some reason the photograph is required to be taken then normally a photographer from the crime team of the Delhi Police is summoned. This fault by itself lends credence to the defense story. There are different versions given by ACP R.K Jha, ASI Bakhtawar Singh and Inspector Ram Kishan on this material aspect of the case. However, they had grudgingly conceded that they did not know as to why this photograph was taken. The photograph was taken by a private photographer summoned at the spot. There is no mention of summoning of any photographer at Mandir Lane or any documentary record in this respect.

31. The trial Court also observed that ASI Bakhtawar Singh was under suspension when he was examined as PW6 on 11.9.1995 claimed that the Inspector Ram Kishan Malik was the de facto and virtually the main investigating officer of this case and it was he who had got the scene of occurrence photographed as shown by photo Ex PW4/DA. When he was asked if recovery memo Ex PW5/A was in his handwriting, Bakhtawar Singh clearly stated that it was not in his handwriting. When pressed as to in whose handwriting was this memo written, Bakhtawar Singh dodged the answer by saying that the Inspector Ram Kishan could only explain as to whom he had ordered to write this memo because the investigation was conducted by him. He submitted that he had only signed the papers at the instance of Inspector Ram Kishan Malik.

32. The Court also observed that the Inspector Ram Kishan Malik was the main investigating officer in this case and he had taken the services of his subordinates

in preparing various documents to get them involved in the investigation work and SI S.K. girl was deliberately kept out of any part of the investigation itself suggests that the entire raid was stage managed as not even a single document is attested by S.K. girl who was shown to be a member of the raiding party.

33. The learned Additional Sessions Judge made serious remarks regarding the recovery memo Ex. PW5/A. He observed that according to ACP R.K. Jha recovery memo was recorded by ASI Bakhtawar Singh. ASI Bakhtawar Singh denied this and took the stand that only Inspector Ram Kishan Malik could throw light on this. Inspector Ram Kishan Malik did not clarify the position and stated that he could not say who had written this memo. The Court observed as under:-

' When I was preparing the judgment, I came across some documents which were in the hand-writing of S.I. Suresh Dabbas posted in Special Staff, New Delhi District to whom the last part of the investigation of the case was entrusted on 18.7.1992. I then realized that the recovery memo Ex. P.W.5/A appeared to be in the same hand-writing of Suresh Dabbas but he was not cited as a witness. He was, therefore, summoned by this court for 30-10-95. By this time Suresh Dabbas had been promoted as Inspector and was working in the VIP Security. According to him under the direction of Inspector Gurcharan Singh, in charge of Special Staff, New Delhi under whom he was posted as Sub-Inspector had prepared the charge-sheet of this case after completing proceedings U/s 82 and 83 of the Cr.P.C against absconding accused Shiv Parshad.

When he was questioned about recovery memo Ex PW5/A, Sh. Dabbas admitted that it was indeed in his hand-writing. All the prosecution witnesses namely ACP R.K. Jha, ASI Bakhtawar Singh and Inspector Ram Kishan Malik were unanimous that Suresh Dabbas was not a member of the raiding party. The raiding party included ACP Jha, Inspector Ram Kishan and ASI Bakhtawar Singh, Sub-Inspector S.K. Giri, H.C. Yash Bir Singh and 5 Constables. When questioned about his role as a member of the raiding party, he had to admit that he was neither a member of the raiding party nor the jeep in question from which opium weighing 47.5 kgs was allegedly recovered as mentioned in ruqqa was intercepted in his presence nor any recovery of opium was effected in his presence on 28-4-

34. The court further observed that this was indeed a shocking revelation to the court as this fact itself gave an insight as to how the whole show was stage-managed and as to how the respondent Sant Kumar has been falsely implicated in this case. The court observed that Suresh Dabbas connived in preparing this most vital document when he was not a member of the raiding party and when nothing was incorporated in this document took place in his presence. When Dabbas was questioned as to why and under whose direction he had written down this recovery memo, Dabbas stated that recovery memo Ex. PW5/A was written by him at the instance of his Inspector in charge Gurcharan Singh to help Inspector Ram Kishan, in charge of Special Staff, New Delhi Range and it was dictated to him by ASI Bakhtawar Singh. This led this court to summon Inspector Gurcharan Singh who was then posted as Inspector S.H.O Preet Vihar. S. Gurcharan Singh showed and filed his posting order dt. 14-5-92 and when Suresh Dabbas Inspector was confronted with the posting order Dabbas took a different stand and after refreshing his memory he submitted that he had written recovery memo Ex PW5/A in the Parliament Street Office of Special Staff, New Delhi District at the instance of Inspector Ram Kishan Malik who was on that day i.e on 28-4-92, in charge of Special Staff, East District Office at Preet Vihar and was also looking after as Inspector in charge of Special Staff, New Delhi District and being only a Sub-Inspector had written Ex.PW5/A as dictated to him by Inspector Malik and ASI Bakhtawar Singh. This proves that the recovery memo Ex PW5/A was prepared by Sub-Inspector Suresh Dabbas who had nothing to do with this raid at the behest of Inspector Ram Kishan Malik.

35. The Court further observed that disclosure made by Inspector Suresh Dabbas persuaded him to entertain a belief that accused Sant Kumar had been falsely implicated and therefore, ACP R.K. Jha, Inspector Ram Kishan Malik and Inspector Suresh Dabbas were again summoned to explain their conduct on the same day i.e 2.2.1996. The Court observed that all three police officials had joined hands and had formulated a strategy to sink and swim together. This is how ACP Jha who had taken a definite stand that EX PW5/A was written in his presence at the spot by ASI Bakhtawar Singh, now took a different stand by saying that he

could not say in whose hand writing this recovery memo was in fact recorded. When he was questioned if being ACP/in charge he would have permitted SI Suresh Dabbas who was not a member of the raiding party to write the recovery memo, R.K. Jha took the stand that he might not have permitted Suresh Dabbas to have written this recovery memo. In the face of this stand, there is no merit in the Explanationn of ACP Jha that he had seen Suresh Dabbas who was posted as Sub Inspector in the Special Staff of New Delhi District present casually at the place of occurrence.

36. Inspector Ram Kishan Malik stated that the recovery memo was prepared at the spot in the presence of SI Suresh Dabbas. When questioned whether Suresh Dabbas was under his control, he took a contrary stand and stated that Special Staff of New Delhi Range of which he was Inspector in charge was entirely different from the three Districts Special Staffs coming under Special Staff, New Delhi Range, namely Special Staff, New Delhi District, Special Staff East District and Special Staff, North East District. He explained that even if he happened to be the investigating officer, he would not have objected if the recovery memo was written by Suresh Dabbas who was not a member of the raiding party. After seeing the police file and the judicial file Malik had to admit that there was no indication anywhere showing the presence of Dabbas at the alleged place of occurrence on 28-4-92 or Dabbas being the scribe of any document.

37. The Court came to the finding that Suresh Dabbas had actively connived with Inspector Ram Kishan Malik to fabricate the recovery memo and disclosure statement. In the concluding portion of the judgment the learned Additional Sessions Judge observed that 'I am of the considered opinion that ACP R.K. Jha, Inspectors Ram Kishan Malik and Suresh Dabbas have indulged in deliberate prevarication as well as utter falsehood for falsely implicating this innocent villager who has suffered incarceration at their hands from 28-4-92 till 9-11-1995 when he was released on bail by this court. I am also of the opinion that the accused has been falsely implicated by Inspector Ram Kishan with active connivance of his subordinate the then Sub-Inspector now Inspector Suresh Dabbas posted in the VIP Security with the support of R.K. Jha, ACP New Delhi District and presently ACP, Vivek Vihar.

38. On consideration of the totality of facts and circumstances of the case, the trial court observed that it is a fit case where the State Government should be made to pay compensation amounting to Rs.2,50,000/- to the accused to be recovered from Inspector Ram Kishan Malik, Inspector Suresh Dabbas and ACP R.K. Jha.

39. We have carefully considered the entire evidence on record and perused the impugned judgment. The facts of this case are rather intricate. On the one hand, there is recovery of 47.5 kgs of opium from the jeep in which the respondent was traveling. Admittedly, there was no enmity between the members of the raiding party and the respondent. The question which continuously troubled us was as to why the raiding party should implicate a totally rustic villager in a case of this nature. On the other hand, we also find considerable merit in the observations of the learned trial Judge, regarding serious lacunas in the prosecution version and because of these lacunas no conviction can be sustained. The main lacunas because of which the benefit of doubt has to be given to the respondent accused are briefly enumerated as under:-

(a) The most important document rukka is written by Suresh Dabbas, who was not a member of the raiding party.

(b) The packets which were properly sealed at the time of deposit in Malkhana, but their seals were found broken when produced in the Court.

{c} This is a case of clear non-compliance of Section 42(2) of the NDPS Act. Admittedly, the secret information received by Inspector Ram Kishan Malik, PW9 was not sent in writing to any of the senior officials. This creates serious doubt about the credibility of the prosecution version.

(d) Assistant Commissioner of Police, R.K. Jha, PW5 asserted that the case property was sealed with the seal of the investigating officer. Whereas ASI Bakhtawar Singh stated that he did not remember the initials of the seal.

(e) All the witnesses including ACP R.K. Jha had admitted that no public witness was requested to join near the Shankar Road round about where the picket was laid at about 4.20 p.m. Whereas it is stated that Rattan Bahadur Chauhan, a public

witness was there but was not examined.

(e) Admittedly, not a single member of the raiding party was there with the initials K.S. When all four gunny bags which had been sealed with the seal K.S were produced in the Court the seals on all of them were found to be in broken condition.

(f) A very important plank of the prosecution case is that the driver of the jeep dashed against a tree before escaping towards the jungle. It is admitted that no mechanical inspection of the vehicle was carried out. It is also not the case of the prosecution that the jeep was towed with the help of a crane for being deposited in the Malkhana. According to R.K. Jha a minor accident was caused to the jeep due to its dashing against the tree, but no such mention is made in the rukka or the recovery memo. The entire prosecution version loses its entire credibility.

(g) In the prosecution version there is discrepancy in the number of jeep which was involved in smuggling of opium.

(h) The mystery is that who had taken the photographs and which photographer was summoned. We have no corresponding record of the same on the case file. This also affects the credibility of the prosecution version.

40. Undoubtedly, there are material contradictions in the testimony of the prosecution witnesses. The investigation in this case has been extremely faulty. The provisions of law have been given a total go bye. On the evidence on record it is not possible to record a conviction in this case. The respondent Sant Kumar is entitled to get the benefit of doubt and to that extent we uphold the findings of the learned Additional Sessions Judge.

41. We have carefully scrutinized the entire evidence on record, but it is difficult to pinpoint the lapses of individual officers. therefore, the direction of the trial Court to make them liable to pay compensation amount to Rs. 2,50,000/- cannot be sustained. The respondent has to be given benefit of doubt primarily because of major lacunas in the prosecution version, but this is certainly not a case where the Court would be justified in giving compensation to the respondent because this

question would always haunt us why should the prosecution falsely implicate a person with whom they had no enmity and shield the real culprit?

42. In view of the serious lacunas in the prosecution version, the respondent was rightly acquitted by the learned Additional Sessions Judge and the findings of the learned Additional Sessions Judge to this extent are upheld, but the direction of the learned Additional Sessions Judge granting compensation to the respondent is set aside.

43. In view of our findings, we find no merit in the Criminal Reference No. 1 of 1996 sent by the learned Additional Sessions Judge to this Court.

44. With these observations, Criminal Appeal No. 179 of 1996 and Criminal Reference No. 1 of 1996 are accordingly disposed of.

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