

Nizamuddin Vs. the State

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Court : Delhi

Decided On : Sep-14-1994

Reported in : 1995(1)ALT(Cri)9

Judge : Dalveer Bhandari, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 293 and 293(4); Narcotic Durgs Psycho. Sub. Act - Sections 20

Appeal No. : Criminal Appeal No. 82 of 1990

Appellant : Nizamuddin

Respondent : The State

Advocate for Def. : Hirday Jot Singh, Adv.

Advocate for Pet/Ap. : Arun Kapil and; Sanjeev Kumar, Advs

Judgement :

1. This appeal is directed against the judgment of Mr. S. L. Khanna, Additional Sessions Judge dated 3rd May, 1990. By which the appellant was convicted under section 20 of the Narcotic Drugs and Psychotropic Substances Act and was sentenced to 10 years rigorous imprisonment and imposed a fine of Rs. 1,00,000/- (One lakh). In default of payment of fine, the accused was further directed to undergo rigorous imprisonment for the period of two years.

2. Brief facts necessary to dispose of this appeal are recapitulated as under :

The Inspector S. P. Singh received information that one Nizamuddin R/o Govind Puri, Kalkaji, New Delhi was dealing in Charas. Inspector S. P. Singh, deputed the informer and one official of the Crime Branch to verify the information. On 19th December, 1987 at about 7.30 p.m. Inspector S. P. Singh received a secret information at the office of Crime Branch that Nizamuddin, appellant would supply charas to some body at 10.00 p.m. at Govind Puri, Kalkaji, New Delhi. Inspector S. P. Singh conveyed his information to Sub-Inspector Om Prakash PW 8 who recorded the information in the daily diary register and constituted a raiding party under the supervision of Inspector S. P. Singh. The raiding party comprising of S. P. Singh PW 6, Sub-Inspector Om Prakash PW 8 and Sub-Inspector Harcharan Verma, constables Brahma Nand, Devi Charan and constables Risal Singh started from the office of Crime Branch and reached at the spot at 9.30 p.m. On request the Sub-Inspector Om Prakash was able to persuade the Scooter Driver Shri Laxmi Chand PW 3 to join the raiding party. The members of the raiding party held naqabandi near Gali No. 2, Govind Puri at about 9.45 p.m. At 10.15 p.m. accused Nizamuddin entered the gali and on the pointing out of informer, he was apprehended. The accused was carrying a bag in his right hand and on search he was found to carry 5 kgs. of charas. 100 grams of charas was taken out as sample and was converted into a parcel of cloth with the seal of O.P. The remaining charas was sealed in a separate parcel and the same seal was used on it. CFSL form was filled up by S.I. Om Prakash who affixed the specimen of seal of O.P. on the said form. The case property including the sample parcel was taken into possession vide memo Exhibit PW 3/A which was attested by Laxmi Chand PW 3 and Inspector S. P. Singh PW 6. Thereafter, Sub-Inspector Om Prakash sent ruqqa exhibit PW 7/A to police Station Kalkaji through constable Brahma Nand PW 5. He was handed over the case property and the CFSL form with the instruction that he should produce the case property and CFSL form before the Station House Officer and all other necessary formalities were completed.

3. On receipt of the CFSL report which disclosed that the sample gave positive test for charas, the appellant was charge-sheeted under Section 20 of the NDPS Act. On the basis of evidence of eight prosecution witnesses and documents on

record, the appellant was found guilty of the offence under section 20 (Part II) of the Act and was convicted accordingly. The appellant aggrieved by the order filed this appeal before this Court.

4. Learned counsel appearing for the appellant submitted that the appellant cannot be convicted on the basis of CFSL report given by Mr. C. L. Bansal, Sr. Scientific Assistant (Chemistry), Central Forensic Science Laboratory, CBI, Lodhi Road, New Delhi.

5. It was submitted by learned counsel for the appellant that Mr. Bansal is not an officer covered by Section 293 of the Code of Criminal Procedure. The report submitted by him is not admissible in evidence, in absence of the aforesaid officer being examined.

6. The submission of the learned counsel is that under Section 293(4)(e) of the Code, the officials named are : the Director, Deputy Director and Assistant Director of the Central Forensic Science Laboratory. If the report is given by any of these officers, then it is per se admissible in evidence. In case the report is not given by any of the three named officials, in that event that official has to be examined in the court and in the absence of his examination in court, the report becomes inadmissible, and the report in question cannot be read in evidence and consequently in the absence of the report, there is nothing in record to prove that the alleged substance recovered by police from the accused/appellant was charas. In case the prosecution is not able to establish that the substance recovered from the accused was charas, in that event the accused cannot be convicted of an offence committed under section 20 of the N.D.P.S. Act. Section 293 of the Code of Criminal Procedure reads as under :

'293. Reports of certain Government scientific experts. - (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the court, if such officer is conversant with the fact of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely :-

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Inspector of Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director Haffkine Institute, Bombay;

(e) the Director (Deputy Director or Assistant Director) of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government'.

7. According to the aforesaid Section, the report given by the Scientific Experts mentioned in Section 293(4)(e) of the Code would be admissible in evidence. Those officers are the Directors, Deputy Director or Assistant Director. Mr. Bansal cannot fall in any of the three categories and in absence of his being examined in court, the report submitted by him cannot be read in evidence. Learned counsel for the appellant relied on two judgments of this Court *Heera Lal v. State*, : 52(1993)DLT231 . In this case also the person who submitted report was Mr. C. L. Bansal, Senior Scientific Assistant (Chemistry, Central Forensic Science Laboratory), Central Bureau of Investigation, Delhi. In the said judgment, it has been laid down that the report is not by the expert, as contemplated by Section 293 of the Code. thereforee, the said statement not being under the hand of a Scientific Expert mentioned in sub-section 4(e) of Section 293 of the Code, cannot be used as evidence in trial without being proved. In that case also Mr. Bansal was

not examined and the court held that it is not established on record that the substance which was recovered from the possession of the appellant was charas. Since proof of the basic fact is lacking the appellant cannot be convicted under section 20 of the N.D.P.S. Act.

8. This court in *Attar Singh v. State (Delhi Admn)*, 1994 3 AD 625, had allowed the appeal of the appellant who was convicted under section 20 of the N.D.P.S. Act. In this case also, the report was given by Mr. C. L. Bansal, Senior Scientific Assistant (Chemistry, Central Forensic Science Laboratory), Central Bureau of Investigation, Delhi but Mr. Bansal was not produced in court. The court held that Mr. Bansal is not covered under Section 293 of the Code and thus his report could not be tendered in evidence, without Mr. Bansal being examined by the court.

9. In the instant case also, learned counsel appearing for the State submitted that the matter be remanded to the trial court for recording the statement of Mr. Bansal. Similar prayer was specifically declined in *Attar Singh's* case (*supra*), where the accused was in jail for 5 years. In the instant case, the accused was arrested on 19th December, 1987 and almost for the last 7 years, he is in jail. Looking to the peculiar facts and circumstances of this case, this prayer of the learned counsel for the State cannot be accepted. The prosecution has produced other witnesses who claim that the substance recovered was charas but there is no material on which it could be safely said that the substance recovered was charas. The only clinching evidence can be a report from CFSL. When the report itself cannot be read in evidence on record in that event, it cannot be conclusively ascertained that the recovered substance from the accused/appellant was charas. In these circumstances, the accused appellant has to be given benefit of doubt.

10. In view of the aforesaid conclusion, the result is irresistible that the judgment and order passed by learned Additional Sessions Judge dated 3rd May, 1990 is set aside. The accused/appellant gets the benefit of doubt and is accordingly acquitted. Consequently, appeal is allowed and appellant shall be released forthwith if not required to be detained in any other case.

11. Appeal allowed.

