

Sunari Alias Chamari Vs. State

Sunari Alias Chamari Vs. State

SooperKanoon Citation : sooperkanoon.com/692180

Court : Delhi

Decided On : Nov-30-1987

Reported in : 34(1988)DLT124

Judge : D.P. Wadhwa, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 18

Appeal No. : Civil Revision Appeal No. 84 of 1987

Appellant : Sunari Alias Chamari

Respondent : State

Advocate for Pet/Ap. : F. Anthony,; K.B. Rohtagi,; J.K. Dass and;

Judgement :

D.P. Wadhwa, J.

(1) The appellant was convicted for offences under Sections 18 and 21 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (for short 'the Act') and was sentenced to undergo rigorous imprisonment for ten years on each count and to pay a fine of Rs. 1,00,000.00 on each of the two counts. These sentences of imprisonment were directed to run concurrently. The judgment and order of conviction are both dated 18th March, 1987. The appellant has appealed against her conviction and sentence.

(2) After the investigation was complete and the appellant committed to stand her trial in the court of Sessions, she was Charged as under :-

'That on 30.7.86 at about 12.15 p.m. at Shamshan Ghat near Khyala Booster Pump within the jurisdiction of P.S. Rajouri Garden you were found in possession of 95 gms of opium without any permit or license and thereby you have committed an offence punishable under section 18 of N.D.P.S. Act and within my cognizance. Secondly that on the aforesaid date, time and place you were found in possession of 1 gms of heroin without any permit or license and thereby you have committed an offence punishable under section 21 of N.D.P.S. Act and within my cognizance.'

The appellant pleaded not guilty.

(3) In support of the charge the prosecution examined, as many as seven witnesses. The prosecution case can well be narrated from the statement of S.I. Ravi Shankar PW-7.

(4) He said that on 30th July, 1986 while being posted at P.S. Rajouri Garden and while on patrol duty along with lady Head Constable Kalawati and Head Constable Dharampal, he received a secret information that a woman was selling smack near the cremation ground of Khyala. At the time the information was received S.I. Ravi Shankar was at the booster pump of Khyala, where always there is a Chowkidar. Inspector Ashok Hari, SHO Rajouri Garden also met SI Ravi Shankar at that time. He was also on patrol duty. This was around noon time. Inspector Ashok Hari was accompanied with constables Braham Parkash and Ravi Dutt. They also joined the police party of SI Ravi Shankar. SI Ravi Shankar requested three or four persons who were passers to join the police party but they refused. The police party, then went to the cremation ground of Khyala in the Pick up of Inspector Ashok Hari. The informer was also with him. He identified the appellant when the police party was some distance away from the appellant was nabbed though she wanted to give a slip. She was told that in case she so wanted she could be produced before a gazetted officer or a Metropolitan Magistrate. But she did not accept the offer. She was searched by the lady Head Constable Kalawati. From the right side pocket of the kutra which the appellant was wearing

opium weighing 95 gms. and heroin weighing 1 gm. were recovered. The police then completed its investigation. Some quantity of opium and heroin was also sent for Chemical Cfs to the Control Forensic Scientific Laboratory (CFSL). The result of the analysis of the Cfs was that the articles recovered were opium and heroin. . This version of the recovery of opium and heroin as given , by Si Ravi Shankar found support in the statements of Inspector Ashok Hari-PW 2, lady Head Constable Kalawati-PW 5 and Head Constable Dharmpal - Public Witness 6.

(5) The statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure. She denied any recovery of either opium or heroin from her. She, in fact, denied the whole incident all together. The trial court accepted the version of the prosecution and convicted and sentenced the appellant as above mentioned. The minimum imprisonment for an offence under Section 18 of the Act is ten years which may extend to twenty years 126 and a person convicted under this section is also liable to a fine which shall not be less than Rs. 1 lac but which may extend to Rs. 2 lacs. The court can even impose a fine exceeding Rs. 2 lacs for reasons to be recorded in the judgment. Similar punishment is prescribed under Section 21 of the Act. Since, stringent punishments are provided it led Mr. Frank Anthony, learned counsel for the appellant, to contend that there has to be strict compliance with the provisions of law regarding search and seizure before a court could return its finding of conviction against an accused. In support of his contentions he relied on a decision of this court in Cr. A. 111/86 Rattan Lal v. State, decided on 10th March, 1987 (Malik Sharief-Ud-Din, J). This case also turned on the provisions of the Act and the accused therein had been convicted under Section 10 of the Act.

6. Under Section 51 of the Act the provisions of the Code of Criminal Procedure, 1973 apply to all warrants issued and arrests, searches and seizures made under the Act in so far the provisions contained in the Code of Criminal Procedure are not inconsistent with the provisions of the Act, Chapter Vii of the Code contains provisions relating to processes to compel the production of things. Part C of this Chapter contains general provisions relating to searches. Sub-sections

(4) and

(8) of Section 100 falling under this chapter would be relevant. Under sub-section

(4) before making a search the officer or other person concerned is required to call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or of any other locality if no such inhabitant of the locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do. Under sub-section

(8) any person who without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code. Section 187 of the Indian Penal Code is in two parts. In the first part punishment prescribed is simple imprisonment for a term which may extend to one month or with fine extending to Rs. 200.00 or with both. In the second part a person may be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to Rs. 500.00 or with both. Calling of independent witnesses from the public for witnessing the search is not an idle formality. In the present case the prosecution witnesses forming the police party have made casual statements that Si Ravi Shankar did ask three or four persons to join the police party but they refused. There is no description as to who were the persons who were asked to witness the search and whether they were apprised of the provisions of Section 187 of the Indian Penal Code. It may be that in a given case due to urgency of the matter or for variety of the reasons there may not be strict compliance with the provisions of associating public witnesses during course of search. This is certainly not so in the present case. It was broad day light. A school was situated at a distance of about 400 or 450 yards. If reference is made to the site plan (Ex. PW-7/A) it will be seen that booster pump of Khyala is adjacent to the cremation ground and opposite cremation ground there is a cement godown. The road at which the Cremation ground was located was not a deserted road and in fact prosecution witnesses did state that persons collected there when seizure in question was made. 127

7. From the evidence on record in the present case, it does appear to me that no attempt was made to associate public witnesses before searching the person of the appellant. In the case of *Rattan Lal v. State (Supra)* Malik, J. observed that in view of the nature of punishment provided for the offence under the Act the legislature deliberately made certain provisions to afford safeguards so that innocent persons are not harassed and if the investigating agency deliberately ignored to comply with the provisions of the Act, the courts would have to approach their action with reservations. It was further observed that the matter in that case had to be viewed with suspicion if the provisions of the law were not strictly complied with and the least could be said was that it was so done with an oblique motive. Of course, in the present case I will not go to that extent.

8. I am of the opinion that the witnesses of the public were not associated for reasons best known to the investigating. I am not prepared to believe that witnesses were not available. All this leads me to the conclusion that the recovery of opium and heroin, as alleged, is not free from doubt. I will not, therefore, rely on the sole testimony of the police officers regarding the recovery of opium and heroin from the appellant. I would, therefore, accept the appeal and acquit the appellant.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com