

Girender Singh Vs. State

Girender Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/692544

Court : Delhi

Decided On : Dec-19-1988

Reported in : ILR1988Delhi291

Judge : P.K. Bahri, J.

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

Appeal No. : Criminal Appeal No. 113 of 1988

Appellant : Girender Singh

Respondent : State

Advocate for Pet/Ap. : Usha Kumari, Adv

Judgement :

Bahri, J.

(1) Appellant who has been convicted for an offence punishable under Section 18 of the Narcotic Drug's and Psychotropic Substances Act, 1985 vide order dated July 6, 1988 and has been sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 1,00,000 vide order dated July 7, 1988 by an Additional Sessions Judge, Delhi has come up in appeal. Appellant has filed this appeal through Superintendent, Jail. He was not in a position to engage the services of any counsel, so Mrs. Usha Kumar, Advocate was appointed as amices

curiae to represent the appellant and she had advanced the arguments in this appeal. The appeal is barred 36 days. No application has been moved by the appellant seeking condensation of delay. However, I would decide the appeal on merits.

(2) The appellant was apprehended on May 29, 1987 at about 6.30 P.M. outside the entrance gate of Bus Terminal Azadpur, Delhi while he was in possession of 1 Kg. Opium. On the said date, S.I. Kali R'arn, Public Witness -5 was patrolling the area; that he received secret information at 6 P.M. that a person having opium in his possession would be coming from the side of Ajodhya Textile Mills. He immediately constituted the raiding party comprises of himself, constables Raj Nath, Om Prakash and one public witness Public Witness -1 Jagmohan. The search, of the appellant was taken in presence of A.C.P. Shri A. K. Singn, PW-6 as appellant want-d that his search should be taken in presence of a Gazetted Officer. S.H.O. of the police station concerned Shri Vijay Kumar, Public Witness -3 had also reached the spot and the appellant was at that time having a bag in his right hand which was found to contain the opium wrapped in a polythene paper. The same was duly weighed and a sample of 50 grams was taken. The sample as well as the remaining opium was sealed separately and both the Investigating Officer as well as Sho put their seals and thereafter the case property was deposited in the Malkhana. The sample was duly seat to S.P.S.L. and the report from the C.F.S.L. was received which is Ex. Public Witness showing that the percentage of morphine to the extent of 2.4 (approximately) was found in the sample, so it was found to give positive test for opium.

(3) The prosecution version is duly supported by Public Witness -1, Jagmohan, the public witness Public Witness -2, Constable Om Prakash, Public Witness -3, Inspector Vijay Kumar, Public Witness -5, S.I. Kali , Public Witness -6 A.C.P. A. K. Singh. I have gone through their statements and find that nothing substantial came out from their statements to show that the prosecution story is in 'any manner doubtful. The public witness is not shown to be in any manner interest to the police. He is having a shop at Azadpur Mandi. The counsel for the appellant has further contended that no other public witness has been joined so the prosecution version should not be given any credence. In the statements of I.O. as well as

Public Witness -1 it has come out that some other public witnesses were also requested to join but they went away expressing their difficulties. It has been laid down by the Supreme Court in State of U.P versus Suresh, 1982 . L.J 850 that the question is not whether the prosecution should have been examined some other persons as witnesses who were present at the time of the occurrence but it is whether the evidence of the witnesses examined by the prosecution should be considered acceptable or not for proving the case of the prosecution against the accused. The learned counsel for the appellant could not point out any other infirmity in the prosecution case. The appellant in his statement under Section 313 Criminal Procedure Code . only pleaded that he was innocent and has been falsely implicated but he did not give any reason for his false implication. A plea was raised before the trial Court that Jagmohan is a stock witness of the police which was negated for good reason because no material was brought on record to show that this particular public witness had joined police in any other case for investigation.

(4) The learned counsel for the appellant has pointed out that the recovery memo in this case has not been signed by A.C.P., so there is nothing to show that the A.C.P. in fact was present when the search of the appellant was carried out. The mere fact that A.C.P. does not put his signature on the memo does not mean that his testimony in Court is not to be given credence. In fact, on receiving wireless messages, he had reached spot and the search of the appellant was carried out in his presence. Public Witness -6 is a very responsible officer of the police force and I do not see any reason to doubt his testimony particularly when nothing of any substance was brought out in his cross-examination which could throw any doubt regarding his testimony in Court.

(5) As a matter of fact in the Rukka which was prepared at the spot after the appellant has been apprehended and the recoveries have been effected, it has been categorically mentioned that as appellant had desired that his personal search be carried out in presence of a gazetted officer, a wireless message was given to the A.C.P. who arrived at the spot and the search of the appellant was carried out in his presence. On the basis of this Rukka, Ex. Public Witness -5/A, the case was registered as per Fir of which Public Witness -5/B is the copy 'at 8.15

P.M. on that very day. So it cannot be argued that the prosecution has introduced belatedly the presence of A.C.P. at the time of effecting the recovery from the appellant. In the grounds of appeal the appellant had mentioned that as soon as it is recorded in the Rukka itself that the appellant desired his search to be carried out by a gazetted officer. The effort should have been made; to have a Magistrate at the spot. I do not see that it was necessary to have a Magistrate at the spot for effecting the personal search of the appellant when a gazetted officer has been called to the spot. The mere fact that ACP is the higher officer in the police force itself does not mean that the Court should doubt the testimony of the said officer. It has also been pointed out that there is no evidence to show that any wireless message had been sent to the A.C.P. The A.C.P. has categorically deposed that if a wireless message is received directly, then there is no procedure to keep any record of the same. It is only when the wireless message is sent to the Control Room that a record of such a wireless message is kept in the Control Room. Thus the Explanation given by the A.C.P. is not found to be incorrect. In the grounds of appeal then reference is made to certain discrepancy as to how much time it took in completing the proceedings at the spot. I do not think that such small variations in the statements of the witnesses would throw any doubt on the prosecution case. Then, reference is made in the grounds of appeal to Section 100, Criminal Procedure Code. I do not understand how the provisions of the said Section are applicable because the search was not to be carried out in any premises. So I find that the conviction of the appellant is well based and there appears to be no infirmity in the judgment of the Additional Sessions Judge which I hereby affirm. I find no merit in this appeal which is hereby dismissed.