

Naraln Singh Vs. State

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Court : Delhi

Decided On : Dec-19-1988

Reported in : 37(1989)DLT268

Judge : P.K. Bahri, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 18;
[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 190

Appeal No. : Criminal Appeal No. 32 of 1988

Appellant : Naraln Singh

Respondent : State

Advocate for Pet/Ap. : Sanjay Suri, Adv

Judgement :

Bahri, J.

(1) Shri Jaspal Singh, Additional Sessions Judge, Delhi had convicted appellant vide his order dated January 28, 1988 for an offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act 1985 and vide his subsequent order dated January 29, 1988 he has sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 1,00,000. The 'appellant was found to be in possession of 300 Grams of opium on January 29,

1987 at 6 P.M. at Sanjay Nagar Market railway line within the jurisdiction of Police Station Subzi Mandi. The appellant has sent this appeal from jail and had expressed his inability to make the services of any counsel, so I appointed Shri Sanjay Suri, Advocate as amicus curiae. I have heard the arguments and had gone through the file and find that there is no merit in this appeal.

(2) The prosecution case in brief is that on January 29, 1987. S.I Surinder Kumar who was posted as in charge Police Post Culabi Bagh and while he was patrolling the area Along with constable Ashok Kumar and Head Constable Rajinder Singh. he received a secret information at about 5.40 P.M. that a middle aged man wearing a suit and having wrapped himself with a is chaddar would be moving in Sanjay Nagar Park Market for purposes of selling opium. He is stated to have requested certain public witnesses to join the raiding party and one Public Witness Dharampal agreed to join the raiding party and thus at about 6 P.M. the appellant who was pointed out by the secret informer was apprehended. The appellant was made aware of his Right to have his personal search in the presence of Metropolitan Magistrate or a gazetted officer but the appellant is stated to have declined the said option and thereafter the search of the appellant was carried out and from the left outer pocket of his coat ten small pieces of paper were recovered and from the right side of the outer pocket of the .coat a small brass scale with two weights, one of 5 grams and the other of 50 grams were recovered. The opium was duly weighed and found to be 300 Grams out of which a representative sample of 50 Grams was taken in the presence of S.H.O. The representative sample as well as the remaining opium was duly sealed with the seals of I.O. as well as of the S.H.O. The weighing scale and the weights recovered from the appellant were Ex. Public Witness 2 to Ex. Public Witness 4. The Seizure Memo prepared at the spot is Ex. Public Witness 4/A. The Rukka was sent & on the basis of which case was registered vide Fir copy of which is Ex. Public Witness 2/A. The case property was duly deposited in the Malkhana and later on the sample in question was sent to C.F.S.L. through Constable Jacob Pal and after the sample has been analysed, it was received back with the seal of C.F.S.L. and deposited in the Malkhana by the same constable on March 11, 1987. The report of the C.F.S.L. is Ex. Pa which shows that the contents of the sample gave positive test for opium with the percentage of morphine being 1.9 (approx). The prosecution

case is supported by Public Witness -4, Dharampal, public witness Public Witness -5, S.H.O. Ishwar Singh, S.I. Surinder Kumar. Public Witness 1 is the formal witness of Malkhana and he deposed that so long as the case property remained in my custody it was not tampered with in any manner. Public Witness -3 is the constable who had taken the sample to C.F.S.L.

(3) The learned counsel for the appellant has pointed out that in the statements of Public Witness -5 and Public Witness -6, it has been mentioned that the recovery was effected on January 29, 1986 and even in the question put to appellant under Section 313, Criminal Procedure Code . the date of recovery is mentioned as January 29, 1986 and even the learned Additional Sessions Judge has mentioned the same date in his impugned judgment. It is true that according to prosecution version and the documents proved on record it is evident that the recovery was effected on January 29, 1987. It is perhaps due to some slip of tongue that in the statements of PW-5 and Public Witness -6 the year was mentioned as 1986 instead of 1987 and same mistake continued in the examination of appellant as well as in the judgment of the trial Court. I do not think that by this innocuous mistake being made in the recording of year 1986 instead of 1987, any prejudice has been caused to the appellant. It is not the case of the appellant that he was apprehended and arrested in this case in the year 1986. The charge clearly shows that he was apprehended on January 29, 1987 at 6 P.M. and 300 Grams of opium was recovered from him. So no benefit could be allowed to be taken by the appellant by this innocuous mistake made by Public Witness s 5 and 6 in giving wrong year and that mistake being repeated by the Court by putting question to the appellant under Section 313 Criminal Procedure Code . and while dictating the judgment in question.

(4) The learned counsel for the appellant then contended that E Public Witness -I in cross-examination had mentioned that he had recorded no personal observations regarding the parcels deposited in Malkhana bearing the seals. There is no requirement of any rule that Moharrar Malkhana while making entries in the Register has .to record any personal observations. The entry from the Malkhana Register copy of which is Ex. Public Witness 1/A & the contents of which shows that the case property duly sealed have been deposited and details

of the seals also are indicated. The learned counsel for the appellant then argued that Public Witness -I had not made reference to the deposit of the scale and the weights also recovered from the appellant. The counsel for the appellant forgets that in the copy of the entry from the Malkhana .Register, Ex. PWI/A it is clearly mentioned that besides the sample and the remaining opium in sealed parcels, the weights and the scale recovered from the appellant also stood deposited in the Malkhana. They were also duly exhibited in the Court. So, nothing turns on this submission of the learned counsel for the appellant. He has further argued that it is not mentioned by the prosecution witnesses as to how the 1.O. obtained the necessary scale and weights for weighing the opium. When positive statements have been made by the prosecution witnesses that opium was duly weighed, it was for the defense to have elicited details while cross-examination as to from where the Investigating Officer obtained the necessary scale and weights. The learned counsel for the appellant also drew my attention to provisions of Section 100 Criminal Procedure Code . and contended that it was mandatory on the part of the police to have joined at least two public witnesses before taking search of the appellant. The provisions of Section 100 Cr. P.C. in my opinion are not applicable to the personal search being effected. They apply if the search is to be carried out of any place or premises. As a matter of fact in the present case other public witnesses were asked to join but they declined and are stated to have gone away. So the mere fact that only one public witness has been joined does not vitiate the prosecution case in any manner. It is pertinent to mention that the prosecution case is duly supported by an independent public witness. From cross-examination of Dharampal nothing came out to show that this witness has any reason to depose falsely at the instance of the police. This witness is having his own business in a garage constituted in Sanjay Nagar Market and has stated that he has never appeared as prosecution witness in any other case. No material was brought on record by the appellant to show that this witness has any links with the police so as to toe the line of police unnecessarily. It is significant to mention that the appellant in his statement under Section 313 Criminal Procedure Code . besides taking the usual plea that he has been falsely implicated, did not give any reason as to why he has been falsely implicated in this case. He mentioned in his statement that Dharampal is a stuck witness. Except for this bold statement made

by him nothing was brought on record to show that Dharampal is a stock witness or had appeared in any other case for the prosecution. Nothing much was brought out in cross-examination of the important witnesses which could throw any doubt about the prosecution case.

(5) The learned counsel for the appellant has cited Sunnari alias Chamari v. State 1987 (2) F.A.C. P. 219; (1) Ratan Lal versus State 1987 (1) F.A.C. P. 130 (2) in which it has been laid down that the mandatory provisions contained in Section 42 to 55 of the Act must be adhered to in order to show that investigation of the case is fair. Nothing said in these judgments is applicable to the present case because it is not shown that the prosecution has failed to comply with any provisions of the Act. So I hold that conviction of the appellant is well based and the judgment of the Additional Sessions Judge is not liable to be interfered. I, hereby, dismiss the appeal.

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