

Baldev Singh Vs. State

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Court : Delhi

Decided On : Dec-19-1988

Reported in : 37(1989)DLT147; 1989(22)LC495(Delhi)

Judge : P.K. Bahri, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 21

Appeal No. : Criminal Appeal No. 172 of 1987

Appellant : Baldev Singh

Respondent : State

Advocate for Pet/Ap. : Deepak Gandhi and; T.S. Sodhi, Advs

Judgement :

P.K. Bahri, J.

(1) This appeal has been brought against a judgment dated July 18, 1987 of Shri R. C. Jain, Additional Sessions Judge by which he convicted the appellant for an offence 4 under Section 21 of the N.D.P.S.Act and subsequent order dated October 21, 1987 sentencing the appellant to undergo rigorous imprisonment for 12 years and to pay a fine of Rs. one lakh and in default of payment of fine to further undergo imprisonment for two years.

(2) The facts of the case in brief are that on April 15, 1986 at about 8.30 P.M. a police party led by Inspector Dharampal Singh was present at the Regal Building, Connaught Place, New Delhi on routine patrolling duty, that a secret information was received that two persons would be coming at Plaza Bus Stop and would be in possession of charas. The raiding party was formed by joining one public witness Shankar Lal and on pointing out by the secret informer the appellant and one Bhupinder Singh were apprehended and on the personal search of the appellant, his bag was found to contain 5 packets each having two kilograms of charas. Before taking personal search appellant had been offered that his search could be taken in the presence of gazetted officer but the appellant declined. The samples from each of the packet were taken and the samples as well as the remaining charas were sealed into 'two separate parcels with the seal of JPT. The seal after use was handed over to Shankar Lal. The accused were arrested and the case property was handed over to S.H.O. at the police station who affixed his seal of Pnr on the samples as well as the parcels containing the remaining charas. It is the case of the prosecution that constable Satdev Public Witness 6 was handed over the samples duly sealed by the Moharrar Mal Khana and he delivered the same intact at Cfsi and after the samples were analysed they were sealed with the seals of Cfsi and were deposited back in the police Mal Khana. The report of the Cfsi indicated that the samples gave positive tests for charas. The report 'also indicated that the five sealed samples were received with the seals intact which tallied with the seals specimen enclosed. The report is Ex. P.W. 5/C.

(3) The charge against the appellant was sought to be proved by statements of Public Witness 2 S.I. Sube Singh, Public Witness 4 Shankar Lal. a public witness, Public Witness 5 S.I. Jai Prakash. As a matter of fact the learned counsel for the appellant has not challenged the statements of these witnesses with regard to the recovery 'having. been effected from the appellant. He has only contended that there is no sufficient evidence led on the record by the prosecution to prove that in fact the samples which were seized from the appellant had been not tempered with and were tested at the Cfsi after tallying the seals with the sample seals. Public Witness I A.S.I. Jeet Singh, who was working as Duty Officer at the relevant time, deposed that the case property was handed over Q to him by constable

Ganesh Dassad the case property stood sealed with the seal of the 1.O. and he produced the case property before the S.H.O. who affixed his seal of Pna on the case property and then case property was deposited with the Moharrar Malkhana. Public Witness 3 Inspector P. N. Arora who was 1 working as S.H.O. of Police Station Connaught Place at the relevant time proved the factum of his having affixed the seal on the case property and the samples. Public Witness 6 constable Sat Dev deposed that he on April 30, 1986 had taken five samples parcels duly sealed with the seals of Jpt and Pna and he deposited the same at Cfsi intact and on June 25, 1986 he brought the sealed parcels with the seals of Cfsi and deposited the same with the Moharrar Malkhana. Public Witness 8 Head Constable Sham Raza was working as Moharrar Malkhana. He also made similar statements. It is, of course, proved that the samples were duly sealed with the two seals and were deposited in the Malkhana intact and were taken by the constable who had deposited the same intact at the CFSL. The crucial question which 'arises is as to Whether the said samples were tested by the expert at the CFSL. For this purpose prosecution examined Public Witness 7 N. K. Prasad, Senior Scientific Officer-cum-Astt. Chemical Examiner. (government of India, who proved his report Ex. Public Witness Sc, but surprisingly enough he deposed that the samples which he examined had only the seal of Jpt and he had compared the specimen seal Jpt received with the samples with the seal affixed on the sample. It is pertinent to mention that he has not made is reference to the seal of Pna at all. The prosecution allowed this testimony to go on the record unchallenged. So it appears comfrey that the samples which were examined by Shri N. K. Prasad were not the samples of this case because the samples of the case in hand had another seal of Pna affixed on them in addition to the seal of JPT. Shri N. K. Prasad has not made reference to the other seal of PNA. Ho does not say that the samples which he examined had two seals of Jpt and Pna affixed on them and he tallied those seals with the specimen seals. He makes reference only to the seal of Jpt and also specimen seal of JPT. So it cannot be held in the present ease that the samples of the case in hand were examined by the expert. This fact alone is sufficient to acquit the accused, it was held in 1987 (3) Dlt 305 Peter Robertson Cowan v. State (1) that the prosecution must prove that the sample taken from the product recovered from the accused is analysed by the expert without the sample being

tampered with. In the cited case the facts were also similar. Samples were sealed according to the prosecution with the seals of Bds and Vm but Public Witness 2 Constable Mahabir Singh who had taken the samples from the Malkhana for depositing at Cfsi deposed that he took the sealed parcel with the sacs of Bds and deposited the same at Cfsi for analysis. He did not make any reference to the seal of V.M. being there on the sample. It was held in this case that from the evidence led on the record it can be said that what was seized from the appellant was never sent for analysis and it is impossible to say what was seized from the appellant was charas. The appellant in that case was acquitted on this score alone. In the present case also it cannot be held that the sample which was examined by the Expert at Cfsi was the sample seized from the appellant because the Expert categorically stated that the sample had only one seal of Jpt, whereas the case of the prosecution is that the samples which were taken from the appellant were sealed with two seals-one of Jpt and the other of PNA. So, I hold that it is not proved that the product recovered from the appellant was in fact charas,

(4) I hence allow the appeal and set aside the conviction and the sentence and acquit the appellant.