

Tuldlep Singh Vs. State

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Court : Delhi

Decided On : Jan-17-1989

Reported in : 37(1989)DLT334

Judge : P.K. Bahri, J.

Acts : Narcotic Drugs & [Psychotropic Substances Act, 1985](#) - Sections 20

Appeal No. : Criminal Appeal No. 30 of 1988

Appellant : Tuldlep Singh

Respondent : State

Advocate for Pet/Ap. : S.K. Dubey and; K.K. Bakshi, Advs

Judgement :

P.K. Bahri J.

(1) -TULDEEP Singh who was convicted for an offence punishable' under 'Section 20 Part II of N.D.P.S. Act vide judgment dated January 20 1988 and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of rupees one lac and in default to further undergo rigorous imprisonment for two years vide subsequent order dated January 25 1988 by the Additional Sessions Judge, New Delhi has filed this appeal through jail against his conviction and the sentences. As the appellant was not in a position to engage any counsel, Shri SK. Dubey,

advocate was appointed as amicus curiae and I have heard arguments advanced by him and also heard the arguments of the counsel for the State. Although the appeal is barred by five days yet I have heard the arguments on merits.

(2) The appellant was apprehended on 15th January 1987 at about 1 50 P M at the Bus Stand D.D.A Flats Kalka Ji while he was in possession of about 7 Kg. 800.grams of charas. S.I. Ram Kumar then posted in police station Kalka Ji, accompanied by Head Constables Ramesh Chand and Balbir Singb, constable Bir Singh were stated to be patrolling the area that he received secret information near Central Market Dda Flats. Kalka Ji of the presence of one person at the D.T.C. Bus Stand of Route No. 429 who would be having a bundle containing the charas. After joining a public witness Shri Shankar Lal son of Bhikari Dass, the raiding party reached the spot and on the pointing out by the secret informer the appellant was apprehended and was found to be having the bundle in his right hand and he was apprised of his right to get himself searched in the presence of gazetted officer or a Magistrate but on his declining to have his search carried out in this manner, the Investigating Officer proceeded to take the search of the said bundle and it was found to contain the said charas. After taking a sample of 200 grams, the sample as well as the remaining charas converted into sealed parcels in the presence of S.H O. who has also arrived at the spot After the recovery has been effected and both the parcels were sealed with the seals of I.O. as well as of S.H.O. and case property was deposited in the Malkana, Rukka Ex. PW6/A was sent from the spot and case posited vide Fir, copy of which is Ex.PW6/B at about 2.50 P.M. in the police station conceded. The appellant had pleaded innocence during trial.

(3) Head Constable Balbir, PW-2, Shankar Lal, public witness, PW-4 and Ram Kumar, S.I. PW-5 proved the said recovery of the charas from the appellant whereas S.H.O. also appeared as PW-3 give corroboration to the said recovery by deposing that he arrived at the spot when the charas had been recovered and was yet to be converted into sealed parcels. The sample of the said charas was sent through constable Ghasi Ram, PW-1 to C.F.S.L. and the sample was examined by Shri C.L. Bansal, Sr. Scientific Assistant of C.F.S.L. PW-5 who gave his report Ex. PW5/D which shows that the contents gave positive tests for charas. PW-7, Rishi

Kumar proved the Fir and Head Constable Chida Lal PW-8 proved the entry from the Malkhana Register Ex. PW8/A regarding the case property being deposited., intact in Malkhana and sample being sent in intact to C.F.S.L. and being deposited back in the Malkhana after the sample had been examined by the expert of C.F.S.L. The learned counsel for the appellant has vehemently argued that the failure of the I.O. to join any other public witness should render the case against the appellant as doubtful. He made reference to Section 100(4) Cr.P.C., in support of his contention that at least two respectable persons of the locality should have been joined as witnesses before the appellant was apprehended and his personal search was taken. It must be emphasised that Section 100 Cr.P.C. applies to the searches being made of places or premises and the persons found nearabout the premises. The present was not such a case. So, strictly speaking the provisions of Section 100 Cr.P.C. are not applicable to the facts of the present case. At any rate it has come out in the statements of the witnesses that five or six public witnesses were asked to join and only Shankar Lal agreed to join while others expressed their inability and they went away without disclosing their names and addresses. So, it is not a case where the I.O. had not made any serious attempt to join any public witness. The mere fact that his effort to join some other public witnesses remained unfruitful does not mean that the prosecution story is to be disbelieved with regard to the factum of recovery when it is proved that the statements of the police witnesses as well as the solitary public witness Shankar Lal are trustworthy and do not suffer from any infirmities.

(4) The only infirmity in the evidence pointed out by the learned counsel for the appellant is that PW-2 Head Constable Balbir Sehdev in cross-examination deposed that Rukka was sent through Bir Singh at 1.15 P.M. when the Rukka itself shows that it was prepared at 2.10 PM. at the spot. It appears that due to passage of time. Head Constable Balbir Sehdev had made an inadvertent error in deposing that the Rukka was sent at 1.15 P.M. When we peruse his statement in examination-in-chief we find that he had categorically stated that appellant was apprehended at the spot at 1.15 PM. So, there can be no question of Rukka being sent at that moment because sometime must have been taken by the I.O. in apprehending the appellant and then preparing the Rukka. So, nothing turns on the error made by this witness in his cross-examination with regard to the time of

sending the Rukka.

(5) The counsel for the appellant thereafter urged that Shankar Lal, Pw should not have been believed as he is a stock witness of the police. It is no doubt true that this witness had appeared in two cases of police station Coanaught Place in the year 1986 but those two cases pertain to some occurrences of one day. That would not make the witness as a stock witness of the police. Reference was made to DX-I copy of the Fir at Police Post Okhia, P.S. Badarpur which pertains to a murder case wherein one Shankar Lal son of Bihari Dass resident of TIA(2) Tughlakabad Extension appeared as a witness. Not only the father's name of that Shankar Lal is different from the father's name of the Shankar Lal of the present case but the address of Shankar Lal given in the said Fir is also different. So, this FIR is not in any manner connected with the Shankar Lal Pw in the present case. So, it is not possible to hold that Shankar Lal is a stock witness of the police. Shankar Lal is a depot holder of kerosene oil and is a resident of Govind Puri. It was not suggested to him in cross examination that he is not carrying on the said business in Bengali Colony, Chitranjan Park in Market No. 2. So witness is a respectable one. He has 'duly supported the case of the prosecution. The only discrepancy pointed out by the learned counsel for the appellant in his statement is that this witness did not state that appellant was given a choice of his personal search being done in the presence of a gazetted officer. It appears that this witness perhaps due to lapse of memory failed to mention this fact in his testimony. The other police witnesses have categorically deposed, regarding the said choice being offered to the appellant. I do not think that on account of this minor lapse of memory on the part of Shankar Lal, the prosecution story can be doubted. It is pertinent to mention that in cross-examination of the said relevant witnesses the suggestion was given that accused and his brother Chotte Lal were picked up from the area and the charas was planted on them at the police station. Similarly, in his statement under Section 313, Cr.P.C. the appellant also mentioned that he and his brother were falsely implicated while the actual culprits from whom the charas was in fact recovered were let off by the police. No reasons have been given as to why the police would have allowed the real culprits to go scot-free and instead chose to implicate the appellant and his brother falsely. In the grounds of appeal it has been mentioned that in fact the charas was recovered

from the factory of Shri Shekhawat Hussain where appellant's brother was working and where appellant had gone to meet his brother and appellant and other employees of Shekhawat Hussain were arrested while Shekhawat Hussain was not implicated. This averment which is coming out for the first time in the grounds of appeal can hardly be given any credence. No such suggestion has been made in cross-examination of the prosecution witnesses and it has also not been referred to by the appellant in his statement under Section 313 Cr.P.C. I have gone through statements of the prosecution witnesses and find that they are consistent and nothing has been brought out from cross-examination to show that the prosecution story is not believable or suffers from any infirmities. The Additional Sessions Judge has given good reasons in his Judgment for believing the prosecution case, I find nothing wrong in the judgment of the Additional Sessions Judge. The offence has been brought home to the appellant beyond any shadow of reasonable doubt Conviction and the sentences of the appellant are well based. I find no merit in this appeal which I hereby dismiss.

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