

Upendar Singh Vs. State

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Court : Delhi

Decided On : May-01-1989

Reported in : 38(1989)DLT204

Judge : R.L. Gupt, J.

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

Appeal No. : Criminal Appeal No. 39 of 1988

Appellant : Upendar Singh

Respondent : State

Advocate for Pet/Ap. : Deepak Gandhi, Adv

Judgement :

R.L. Gupta, J.

(1) This appeal is directed against the judgment/sentence dated 14-12-87/16-12-87 by which Sh. R. P. Gupta, learned Additional Sessions Judge, New Delhi convicted the appellant under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (herein after called the Ndps Act, and sentenced him to undergo RI for 10 years and also to pay a fine of Rs. 1,00,000.00 . In default of payment of the fine, the appellant was to under go a further imprisonment of six months.

(2) The brief facts in which this prosecution arose are that on 15th April, 1986, a police party comprising of S. I. Sube Singh, S. 1. Jai Parkash, S. 1. Karan Singh, H. C. Sukh Pal Singh, H. C. Sher Singh and Constable Sat Dev, Rohtas Singh, Tilak Raj, Harish Chand, Ganesh Dutt and Sanjay Singh were patrolling the area of Police Station Connaught Place along with Inspector Dharam Pal Singh in Police Van No. DED-8548. At about 8.30 P.M. while they were near Regal Building, a secret information was received that two persons present near Plaza Bus stand were carrying bags containing charas on their shoulder and they were waiting for the purchaser. A raiding party, therefore, was constituted by the police officials by joining a public witness Shankar Lal of Govind Puri who happened to be present there by chance. The raiding party under the supervision of Inspector Dharam Pal Singh reached near Plaza Bus stand along with the informer where they found two persons standing at about 8.30 P.M. Those two persons were (i) Baldev Singh and (2) the appellant Upender Singh. Before subjecting them to search, they were asked whether they desired their search in the presence of a Gazetted Officer or a Magistrate. The appellant declined the offer. So his bag was search which was found to contain 4 packets of polythene containing charas. Each packet weighed 2 Kilograms and thus those four packets were found to contain 8 Kilograms of charas. These were numbered 1 to 4. 50 grams was separated as sample from each of the packets. Then all the samples and the remaining charas were separately sealed with the seal of SSY. A CfsI form was also filled up. A seizure memo duly attested by the public witness Shankar Lal was prepared. Rukka Ex. Public Witness 3/A was sent by Sube Singh, S. 1. of Police station Connaught Place for registration of a case whereupon a formal Fir was recorded at the Police Station. The seal was handed over to Shankar Lal. The appellant was arrested. The case property was sent to the police Station where Sho Inspector P. N Arora affixed his own seal Pna on all the parcels and got them deposited in the Malkhana of the police station. Later on the sample parcels were sent to CfsI where they were Chemically examined. The report of the Analyst showed that the samples were those of Charas.

(3) To prove the case, the prosecution examined eight witnesses in all who are Public Witness -1 S .H. O. P. N. Arora, Public Witness -2 Inspector Dharam Pal Singh, Public Witness -3 Asi Jeet Singh, Public Witness -4 N. K. Parshad, Senior

Scientific Officer, Public Witness -5 H. C. Atohte Sham Raza, Public Witness -6 Constable Sanjay Kumar, Public Witness -7 S. 1. Sube Singh and Public Witness -8 S. 1. Karan Singh. The public witness Pw Shankar Lal did not support the case of the prosecution against the other accused i.e. Baldev Singh, therefore, he was dropped by the prosecution.

(4) In his statement under Section 313 Criminal Procedure Code ' the appellant denied all the circumstances appearing in evidence against him. In answer to the question as to why this case was planted against him, he replied that he was working as attendant with Dr. Ashok Kumar and one Daljit Singh Yadav was murdered during 1979-80 and police suspected him for the commission of the murder of the said Daljit Singh Yadav and since S. 1. Sube Singh was related to the deceased so he falsely implicated him in this case.

(5) I have learned counsel for the appellant. It is painful to note that in spite of service no body has appeared for the State. The short point argued before me by the learned counsel for the appellant is that according to Public Witness -4 Sh. N. K. Parshad, Senior Scientific of CfsI Officer he had received four samples parcels of this case sealed with the seal of Ssy only and the same tallied with the specimen seal. As stated above the case of the prosecution was that the sample parcel and the remaining parcels of the charas were sealed at the spot with the seal of Ssy and when those contraband articles were brought to the police station, Sho P. N. Arora affixed his own seal with the words 'PNA' on those parcels and thereafter he deposited those parcels in the Malkhana. The police witnesses appearing for the prosecution i.e. Public Witness s 1. 2. 3 and 5 etc. having all stated with one voice that the parcel of the remaining charas and sample parcels were sealed with the seal impression Ssy and PNA. therefore, it is really strange that when sample parcels were sent to CfsI, they were found to contain only one seal impression of SSY. It is thus clear that either the sample parcels sent in this case not of this case or they were tempered with either in the police Malkhana or somewhere else before they were deposited in CFSL. Other person Baldev Singh who was also apprehended along with the appellant was acquitted by P. K. Bahri, J. vide judgment reported as Baldev Singh Vs . State : 37(1989)DLT147 (1). This was also the specific point raised in that appeal whereupon the Hon'ble Judge

acquitted Baldev Singh. This case also suffers from the same infirmity and as already stated above, it cannot be said that the sample parcels sent to CfsI could be the same which were prepared in this case.

(6) I am, thereforee, of the view that the appellant could not be convicted and sentenced in the facts and circumstances of this case. The appeal is, thereforee, accepted. The conviction and sentence against the appellant are set aside. He be set at liberty forthwith if he is not wanted in any other case.

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