

Rattan Lal Vs. State

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Court : Delhi

Decided On : Mar-10-1987

Reported in : 1987(2)Crimes29; 32(1987)DLT1

Judge : Malik Sharif-Ud-Din, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 53;
[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 100(4)

Appeal No. : Criminal Appeal No. 111 of 1986

Appellant : Rattan Lal

Respondent : State

Advocate for Pet/Ap. : Meera Bhatia,; amices Curiae and; S.T. Singh, Advs

Judgement :

Malik Sharif-Ud-Din, J.

(1) The appellant was convicted under section 21 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (hereinafter for short known as Ndps ACT) and was sentenced to undergo R. I. for 10 years and also to the fine of Rs.one lakh and in default to further undergo R. 1. for four months. This order Was passed by Shri S. P. Singh Chaudhari Addl. Sessions Judge, Delhi on 3rd May, 1986.

(2) I may notice the facts which are that on 15th November, 1985 at about 4.15 Pm Public Witness 7 S.I. Rajinder Singh, who was on duty at Palika Bazar, Connaught Place, accompanied by Public Witness 5 Vijender Singh, Head Constable and Public Witness 6 Sajan Singh Constable is said to have received a secret information in pursuance of which they caught hold of the appellant from the circular park in Connaught Place at the pointing out of the informer. The appellant at that time was found smoking a cigarette allegedly containing heroin and on search four grains of heroin was allegedly recovered from his person. The prosecution case further is that out of the four grams, two grams of heroin was taken as sample and both parts were sealed with the seal of Rajinder. Singh S.I. bearing the words 'R.S.' and that the seized articles together with the samples were duly deposited in Malkhana and on Chemical examination by Public Witness 4 Shri N.K. Parshad it Was found to be heroin.

(3) The entire ease of the prosecution rests on the testimony of Public Witness 5 H. C. Vijender Singh, Public Witness 6 Constable Sajan Singh and PW7, S. I. Rajinder Singh, all police officials. There is, of course, no doubt that all of them have fully supported the prosecution case and if their testimony is to be trusted then there is no escape from the conclusion that the appellant is involved in the Commission of this crime.

(4) Mrs. Meera Bhatia, however, urged that it is a very dangerous situation fraught with grave consequences, and the court should not rely on the testimony of a few police officials in the absence of corroboration by other testimony from an independent source. Her contention is that there is no reason why at the time of search these police officials should not have complied with sub-section (4) of section 100 Cr.P. C. which in the light of section 51 of Ndps Act is applicable to the case. Mrs. Meera further urges that considering the object of the Ndps Act and considering the heavy punishment provided for the offence, obviously the legislature intended to be strict in such matters but simultaneously it provided certain safeguards which in view of the strict nature of the legislation have to be followed strictly. Her contention is that if there is a deliberate attempt to ignore the safeguards, the matter has to be approached with great deal of caution and should be treated as not free from doubt.

(5) I personally feel that the learned counsel fear the appellant is justified in raising these contentions. In view of the nature of punishment provided for the offence under the Ndps Act the legislature has deliberately made certain provisions to afford safeguard so that innocent persons are not harassed. If the investigating agency deliberately ignores to comply with the provisions of the Act the courts will have to approach, their action with reservations. The matter has to be viewed with suspicion if the provisions of law are not strictly complied with and the least that can be said is that it is so done with an oblique motive. In the case in hand the seizure and the arrest have been made under section 43 of Ndps Act. Admittedly, no public witness was involved in the matter of search and seizure as envisaged by sub-section (4) of section 100 Criminal Procedure Code . The Explanationn offered is that public witnesses were requested but they declined. to co-operate. My experience is that this Explanationn is now being offered in almost all cases. In the circumstances of a particular case it may so happen that for a variety of reasons public witnesses may decline to associate themselves but generally speaking it does not so happen. If a public witness declines to co-operate without reasonable cause inspire of an order in writing, to witness the seizure and search, he will be deemed to have committed an offence under section 187 Indian Penal Code and this has been clearly spelt out in sub-section (8) of section 100 Cr. P. C. In the present case there is a vague Explanationn that public witnesses were approached but they declined. Neither the name of such witness ha5 been given nor has any order in writing to that effect have been preserved, nor it is asserted that a mention about the same has been made in the case Diary. Obviously, there is a deliberate attempt to defeat the legislative safeguards.

(6) That apart, there is nothing to indicate that the provisions of section 57 of Ndps Act have been complied with. Under the provisions of this section a full report as to the particulars of arrest and seizure has to be submitted to the immediate superior officer within 48 hours. There is nothing to indicate that this has been done. Besides that, the most fatal lapse on the part of the prosecution is that they have failed to get the seized material and the samples preserved for examination of CfsI sealed with the seal of Sho before it is deposited with him for safe custody as envisaged by section 55 of the Ndps Act.

(7) Looking at all these facts in their totality, I have no hesitation in remarking that in this case the public witnesses have deliberately not been associated; the sample has deliberately not been got sealed with the seal of SHO. The court knows that at the time of seizure it was sealed with the seal of Public Witness 7 and Public Witness 4 the expert has stated that when the sample came to him it bore only one seal. Even the report regarding the particulars of seizure and arrest under section 57 Ndrps Act has not been sent to the superior officer. All these facts taken together have rendered the prosecution suspect and the least that can be said is that the prosecution case is not free from doubt. In the circumstances of this case it is very unsafe to act on the uncorroborated testimony of all the three police officials. The appeal is allowed and the conviction and sentence of the appellant are set aside. The appellant is acquitted.

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