

Ajay Kumar Vs. State of Delhi

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Court : Delhi

Decided On : May-21-2002

Reported in : 2002VAD(Delhi)140; 98(2002)DLT315; 2002(64)DRJ84; 2002(82)ECC549

Judge : K.S. Gupta, J.

Acts : Narcotic Drugs & [Psychotropic Substances Act, 1985](#) - Sections 20; Code of Criminal Procedure (CrPC) - Sections 313; Indian Penal Code (IPC) - Sections 34, 323, 394 and 397

Appeal No. : Crl. A. 436/99

Appellant : Ajay Kumar

Respondent : State of Delhi

Advocate for Def. : Baldev Malik, Adv.

Advocate for Pet/Ap. : Mustaq Ahmed and; Athar Alam, Advs

Disposition : Appeal dismissed

Judgement :

K.S. Gupta, J.

1. This appeal is directed against the judgment dated 18th May 1999 and order dated 19th May 1999 of an Additional Sessions Judge convicting the appellant-accused under Section 20 of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'the Act') and sentencing him to undergo RI for 10 years and pay a fine of Rs. 1 lakh. In default of payment of fine, appellant is to further undergo SI for one year.

2. Case of the prosecution, in brief, is that on 17th January, 1997 Inspector R.S. Dahiya, PW-5 received secret information that two boys having charas concealed in two plastic tins, would reach Delhi from Patna. This information was recorded in the D.D. at Serial No. 16-A at 5.30 pm. On instructions of PW-5 a raiding party was organized by SI Chand Ram, PW-10 and HC Gajinder Singh, PW-2, Constable Ayaz Khan, PW-3, Kallu Singh and Rajnath were included therein. On reaching Old Delhi Railway Station, PW-1 Bansi Lal running a book stall there, was also included in the party by PW-10. Thereafter, nakabandi was made at Platform No. 6. Kalka mail reached the platform at 8.05 pm. Appellant who was carrying a bag on his left shoulder was apprehended at the pointing out of informer Along with Abhay Kumar from towards north side of platform around 8.15 pm by PW-10. Appellant was given notice Ex. PW-10/A under Section 50 of the Act. He refused to be searched either in the presence of a Magistrate or Gazetted officer. It is further alleged that in the meantime PW-5 also reached the said platform Along with HC Suresh Kumar, PW-8 at about 8.20 pm. PW-8 was deputed to fetch scale and weights and call the ACP. At about 8.40 pm ACP Jai Pal Singh, PW-4 reached the spot. The bag carried by appellant was found containing a plastic tin. On opening, 9 packets containing charas wrapped in polythene paper were recovered from beneath the pickle from the plastic tin. On weighment, total weight of 9 packets came out to be 9 kgs out of which 50 grams was separated as sample. Sample and remaining. CFSL form was filled in and specimen of both the seals affixed thereon. Recovered charas was seized vide Memo Ex. PW-1/A. On basis of rukka Ex. PW-9/B, FIR (carbon copy Ex. PW-3/B) was registered. Sample parcel was sent for analysis to CFSL, Chandigarh and as per report Ex. PW-9/A same was found to be of charas (Cannabis). After completing investigation, chargesheet was filed against the appellant. Separate chargesheet was filed against said Abhay Kumar from whom similar quantity of charas was recovered,

before Juvenile court, he being Juvenile.

3. In the statement under Section 313 Cr.P.C. stand taken by appellant was that he had been falsely implicated in the case.

4. To bring home the charge under Section 20 NDPS Act, the prosecution examined 10 witnesses in all including PWs 1, 2, 3, 4, 5 and 10, alleged witnesses of recovery. Believing that statements of PWs and disbelieving the stand taken by appellant, he was convicted and sentenced in the manner stated above by the trial court.

5. To be only noticed that said Abhay Kumar was acquitted of the charge under Section 20 by the judgment dated 7th October 1999 by a Juvenile court.

6. Relying on the decision in *Satbir v. State of Haryana*, : 1981 CriLJ1702 , the main thrust of argument advanced by Sh. Mushtaq Ahmed for appellant was that as the prosecution case against appellant and Abhay Kumar was the same, after acquittal of Abhay Kumar the conviction and sentence of appellant have to be set aside. It may be mentioned that in *Satbir Singh's* case (supra), the allegations made were that Satbir Singh Along with Daya Nand had robbed Bhagwant Singh of a watch and a cycle and complainant was also assaulted by fists and kicks by Daya Nand and at a later stage by Satbir Singh. FIR giving the details of properties robbed was lodged on 23rd September 1973. Satbir Singh, appellant and Daya Nand seem to have been convicted under Sections 397/394/323/34 IPC and sentenced to undergo RI for 7 years under Section 397, RI for 2-1/2 years under Section 394 and RI for 2 months under Section 323 IPC by the trial court. In appeal, the High Court acquitted Dayanand but maintained the conviction and sentence of the appellant mainly on the ground of recovery of watch from him on 29th September 1973 when he was arrested. Having regard to the nature of prosecution case against both the accused and Daya Nand having been acquitted by High Court, the appellant was also acquitted by the Apex court holding that it was difficult to segregate the case of appellant from that of Dayanand. In the present case recoveries of 9 kgs of charas each from the appellant and Abhay Kumar were effected separately and two chargesheets filed - one before an Additional Sessions Judge and another before Juvenile court. In my view, the

circumstance that appellant and Abhay Kumar were apprehended at the same time and witnesses against them happened to be common, would not make the prosecution case inseparable. Satbir Singh's case is distinguishable on facts and has no applicability to the facts of this case. Appellant cannot derive any advantage of Abhay Kumar having been acquitted on 7th October 1999.

7. Coming to alleged recovery, out of aforesaid 6 witnesses of recovery PW-1 Bansi Lal who was running a book shop at Railway Station, is an independent witness and has fully supported the prosecution case in regard to 9 kgs of charas having been recovered from a plastic tin kept in a bag carried by the appellant on 17th January 1997. Further, looking at the huge quantity of charas, the possibility of implication of appellant falsely was remote. Deposition of PW-1 coupled with this probability as also statements of PWs 2, 3, 4, 5 and 10 prove beyond any shadow of doubt that said quantity of charas on said date was recovered from the appellant.

8. Consequently, the appeal is dismissed being without any merit.

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