

Anoop Singh Vs. State

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Court : Delhi

Decided On : Apr-10-1992

Reported in : 1992(2)Crimes550; 1992(24)DRJ165

Judge : P.K. Bahari, J.

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

Appeal No. : Criminal Appeal No. 106 of 1988

Appellant : Anoop Singh

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi,; A.K. Jain,; Raman Sawhney and;

Judgement :

P.K. Bahari, J.

(1) This appeal has been brought against judgment dated September 24, 1988 and order of sentence dated September 24, 1988 by which an Additional Session Judge has convicted the appellant of an offence punishable under Section 21 of the N.D.P.S. Act and has sentenced him to undergo rigorous imprisonment of ten years and to pay a fine of Rs. 1 lakh and in default of payment of lime to undergo further rigorous imprisonment of two year. The prosecution case, in brief, is that S.H.O. Sh.O.P.Yadav, PW-6 of Police Station Ambedkar Nagar, while patrolling

the area on March 15, 1987, had received a secret information that a person would come in a jeep Orm 4897 having smack in substantial quantity for delivering it to Puran and he would be going to M.B.Road, Madangir Block B-V. He is stated to have come to the police station and made the entry regarding this particular information in the daily diary at 7.00 P.M. and had also informed A.C.P. Sh. Ashok Chand, PW-4, who come to the police station and then a raiding party was organized comprising of A.C.P. S.H.O., S.I. Rajinder Prasad. P.W.-10, Head Constable Attar Hussain PW-3, Head Constable Satbir Singh, PW-7 and constables Chandan Singh, Rampal, Bhagwat Dayal & Ghanshyam and after joining public witness R.K.Chadha, PW-1, who had come to the police station for some other work and who is also stated to be Special Police Officer, they came to the spot in a police jeep and the raiding party is stated to have took up the position at the 'T' point of M.B.Road and Dakshinpuri and at 8.10 P.M. the appellant was seen coming on loot and was pointed out by the secret informer and was apprehended and he was informed about his being in possession of the smack as per secret information, but he having controverted this fact, his personal search was taken and from his hand a polythene envelope was taken which contained another small polythene packet which on on checking was found to contain 400 gms. of smack, out of which sample of 50 gms. was separated and the remaining smack were converted into two separate sealed cloth parcels and the seal of Rpa and Opy belonging to S.I. Rajinder Prashad and S.H. O. respectively were affixed and the same were taken in to possession vide a recovery memo.

(2) S.I. Jagdish Prashd prepared a 'rukka'. Ex. PW10/A had sent the same through Constable Ghanshyam For registration of the case. The case property was deposited in the 'Malkhana' and the sealed sample was sent to C.F.S.L. on March 27, 1987 through Constable Satish Chander, PW-9 and C.F.S.L. report, Ex. PW-8/H was received to the effect that the sample gave positive test for heroin.

(3) Sh. R.K.Chadha, public witness, how ever during the trial had turned hostile and did not support the prosecution version. According to his testimony, no recovery was effected in his presence and as a matter of fact, he never became a member of anu raiding party and had signed some documents at the behest of the police that they were pertaining to constitution of some delegation. So, no benefit

can be drawn by the appellant or by the prosecution from the testimony of this witness. It is to be emphasised that this witness has some connections with the police as he has been named a Special Police Officer and has been visiting the police station off and on for some work.

(4) Before dealing with the statement of the police officials, which have been relied upon by the prosecution for bringing home the offence to the appellant, I may at first refer to the admitted fact in the case. When the sample was sent to C.F.S.L. for analysis, the expert who had analysed the sample had found that one of the seals affixed on the sample parcel did not tally with the specimen seal of OPY. Before opening the sample, a letter, copy of which is PW8/A, was issued by the C.F.S.L. expert to the S.H.O. bringing it to his notice that one specimen, namely, Opy differ with those of the specimen. forwarded to them with the forwarding note for the purpose of comparison. So, request was made to the S.H.O. to send the actual specimen seal of Opy used on the exhibit. It is hence, clear that specimen seal of Opy which was affixed on the C.F.S.L. form which had been sent Along with the, sample did not tally with one of the seals affixed on the sample. Vide letter, copy of which is PW8/B, S.H.O. appears to have seat another specimen seal of OPY. In response, letter, copy PW8/D, was sent requiring the S.H.O. to come personally to explain the discrepancy appearing in respect of the said seal. Thereafter, it appears that on some verbal discussion, the Director of the C.F.S.L. required the expert of C.F.S.L. to open the sample and examine it.

(5) On the opening of the sample, it was found that only 44.6 gms. of smack was there instead of 50 gms. as was the case set up by the prosecution.

(6) Before I refer to the evidence of the expert and the S.H.O. with regard to the discrepancy appearing with regard to one specimen seal not tallying with the seal affixed on the sample, I may refer to the evidence to show that the prosecution has not cared or bothered to prove as to where the C.F.S.L. Jagdish Prashad, who is the Investigating Officer, is silent as to where the said C.F.S.L. form had been kept. He does not say that the same was deposited with the case property with the Malkhana Muharrar.

(7) The Malkhana Muharrar, PW-7, who was surprisingly a member of the raiding party, also did not say that the C.F.S.L. form was deposited to the Malkhana register. He has produced on record the copy of the entry from the Malkhana register PW7/A. The perusal of the same also shows that there is no reference at all to the C.F.S.L. form. Even in the entry made with regard to the dispatch of the sample to the C.F.S.L., there is no reference to C.F.S.L. form. In *Ravinder Kapoor Vs. State*, besides other facts which threw lot of doubt on the prosecution version, one of the factors which created doubt was that the prosecution evidence did not prove on the record as to in whose custody C.F.S.L. form remained and the same was not tampered with or changed later on and the accused in that case was acquitted. Of course, in the said case also, there was material discrepancy with regard to the actual seal used and affixed on the sample.

(8) As far as the quantity of the smack found in the sample is concerned, there is no explanation given by the prosecution as to how quantity came to be reduced as much as to how quantity came to be reduced as much as 5.4 gms. when the sample was opened. The smack is not likely to vanish when it is the case of the prosecution that the sample was properly sealed. It is too much to conjecture that in the laboratories of the C.F.S.L. very fine scales are used in weighing the commodity while the I.O., who weighs the commodity while investigating the case is liable to make a mistake in weighing the quantity. At any rate, if such a discrepancy has appeared, it was for the prosecution to explain as to how such a discrepancy can occur. This discrepancy alone may not have been sufficient to give benefit of reasonable doubt to the appellant but if this discrepancy is kept in view while examining the other material deficiencies in the prosecution case, the same also assumes lot of importance:

(9) PW8, N.K.Prasad, Senior Scientific Officer, who had found the discrepancy on one of the seals appearing on the sample, has proved the correspondence mentioned above made with the S.H.O. and he has deposed that there was a difference in the letters of the specimen seals Opy as compared with the seal appearing on the sample. It is true that 5 seals of Opy and 5 seals of Rpk had been affixed on the sample but if one seal of Opy is shown to be suspicious or tampered with, it is not possible to hold that sample had remained intact from the

date it was examined by the C.F.S.L. expert. The witness categorically denied that with the cooling of the wax of lac, the difference would result in size of the letters of the seal.

(10) The learned Additional Sessions Judge has not recorded his own observation regarding the difference in the said seal but in the judgment he has tried to explain that this difference in the seal might have occurred due to scrapping of the wax or 'lac'. I do not think that by this process how there could take place any change in the size of the letters on the seal appearing on the C.F.S.L. form. At any rate, a grave doubt arises with regard to the sample having remained intact throughout.

(11) A hypothetical answer was obtained from the witnesses that in case the weighing is done in windy atmosphere, the same could not be so accurate. The prosecution has not brought on record any evidence of any such windy conditions when the sample was being taken by the I.O. It is to be remembered that the seal of Opy was not given to any independent person after it was used and the same remained with the S.H.O. throughout. When we keep in view the facts that not only the C.F.S.L. form containing the specimen seals affixed on the case property was not shown to have been deposited in the Malkhana, and no Explanationn having been given as to in whose possession it remained before it was sent to the C.F.S.L. and also the fact that there was some tampering with one of the seals and also the fact that quantity of the smack recovered from the sample by the C.F.S.L. was much less, should lead to reasonable doubt that the

(12) Sample which was taken at the spot was not kept unhampered till it was examined by the C.F.S.L. expert.

(13) In the absence of any public witness supporting the prosecution version, the court has to expect a better standard of proof in the statement of all the police officials for bringing home the offence to the accused in such a case where minimum sentence prescribed is ten yeas. It is very old saying that founder the crime, the higher the standard of proof.

(14) There have appeared a number of material discrepancies which also throw reasonable doubt on the the prosecution case. According to the prosecution case,

S.I. Rajendra Prashad also had joined the raiding party. It appears that before the raiding party was organized he was not present in the police station and is stated to have arrived in the police station and made the entry at Seriall No. 21-B in his own hand showing his arrival at the police station at 7 P.M. There is another subsequent entry which is also given Seriall No. 21-B made in the hand of Munshi Manohar showing the arrival of the S.H.O. at the same time. It is not explained as to why two different entries have been given the same Seriall number. The learned Additional Session Judge the same as a clerical mistake forgetting that the entry made by Rajendra Prashad is at the end of the page and possibility of it being inserted later on could not be absolutely over-ruled. It is also surprising that there was a Munshi present who had recorded all the previous and later entries in his own hand whereas Rajendra Prashad chose to write his entry his own hand In the rukka, it is mentioned that only one police jeep was used for bringing the raiding party to the spot. The raiding party comprised of 11 persons besides the driver. All the witnesses except the S.H.O. and the i.e who came in to the witness box with one jeep of A.C.P. was used for coming to the spot from the police station. But S.H.O. and the 1.O. realised that it was almost not possible for 12 persons to come in one jeep of the S.H.O. If we peruse the statement of the witnesses, it becomes clear that serious discrepancies arose as to who came in what jeep. Could such an important fact be forgotten by mere passage of time by the witnesses. The learned Additional Session Judge has chosen to believe the S.H.O. and the 1.O. for coming to the conclusion that raiding party came in two jeeps but the said finding is against the documentary evidence produced in the case. The rukka which is the basis of the F.I.R., clearly mentions that only one government jeep was used for coming to the spot and the said jeep was kept behind some shops before the .raiding party took up position. The entries from the Log Book in respect of the jeep of the S.H.O. and also of the A.C.P. had been produced on the record. It appears that the jeep of S.H.O. had travelled 80 Kms. during the period the raiding party remained stationed at the spot. The learned Additional Session Judge gave the Explanationn which is not appearing in the evidence that the jeep might have travelled for some other work at the behest of the S.H.O. while the S.H.O. remained at the spot. The entry in the Log Book shows that 80 Kms. were covered by the S.H.O. while patrolling the area.

(15) Apart from this material discrepancy, there is also discrepancy regarding the alleged efforts made by the police for joining the independent public witnesses. R.K.Chadha had been brought by the police from the police station while coming to the spot and it is stated by all the witnesses except the I.O. that only some of the passers by were requested to join the raiding party and they declined expressing their own difficulties and had gone away, whereas the I.O. came up with the story that even the shop-keepers, whose shops were open at the time of occurrence, had been requested to join but they had declined. The other witnesses have categorically stated that no shop-keeper was asked to join the raided party.

(16) It is repeatedly laid down by this Court that in such cases it should be shown by the police that sincere efforts have been made to join independent witnesses. In the present case, it is evident that no such sincere efforts have been made, particularly when we find that shops were open and one or two shop-keepers could have been persuaded to join the raiding party to witness the recovery being made from the appellant. In case any of the shop-keepers had declined to join the raiding party, the police could have later on taken legal action against such shop-keepers because they could not have escaped the rigours of law while declining to perform their legal duty to assist the police in investigation as a citizen, which is an offence under the Indian Penal Code .

(17) It is not possible to believe only the I.O. that some of the shop-keepers were requested to join the raiding party when all other officials appearing in the witness box stated that no shop-keeper was requested to join the raiding party. Except the A.C.P. and S.H.O. the other police officials are stated to have remained at the spot after the arrest of the accused till the proceedings were completed. They had deposed that the accused was brought to the police station Ambedkar Nagar from the spot and the case property was then deposited in the Malkhana and the time was recorded as 3.00 A.M. I.O. on the other hand has stated that the accused was sent to the police lock-up, Kalkaji from the place of occurrence Along with one constable Mani Ram. Constable Mani Ram was not a part of the raiding party. It appears that some report had been received by the I.O. regarding some occurrence having taken place at another place and he Along with the case

property is stated to have gone to attend to that call and other members of the raiding party were left behind and thereafter, after finishing the work, he again came back and found the raiding party patrolling the area and thereafter he accompanied them to the police station.

(18) It is also surprising that the case property should have been kept by the I.O. all along instead of being handed over to the S.H.O. who was present at the spot, for being deposited in the Malkhana immediately after the recovery was effected.

(19) The S.H.O. and A.C.P. stated that they left the spot at 11.30 P.M. whereas the I.O. states that accused was formally arrested at about 12 mid night and his personal search memo was prepared thereafter. But surprisingly, the personal search memo also bears the signatures of S.H.O. and the A.C.O. It means that they must have signed this memo later on. That also throws some doubt regarding the credibility of these police officers.

(20) In view of the above discussion, I conclude that the accused deserves to be given benefit of doubt and it is not safe to bring home the offence to the accused in view of the said material discrepancies appearing in the prosecution case.

(21) I hence, allow the appeal and set aside the impugned judgment and the order and acquit the appellant of the charge.