

Rahis Ahmed Vs. State

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SooperKanoon Citation : sooperkanoon.com/700010

Court : Delhi

Decided On : Nov-23-1993

Reported in : 1993IVAD(Delhi)932; 1994(28)DRJ59

Judge : S.C. Jain, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 293; Narcotic Drugs & [Psychotropic Substances Act, 1985](#) - Sections 20

Appeal No. : Criminal Appeal No. 23 of 1992

Appellant : Rahis Ahmed

Respondent : State

Advocate for Pet/Ap. : J.S. Arora and; H.J. Singh, Advs

Judgement :

S.C. Jain, J.

(1) The facts giving rise to this appeal are that on 15th April,1991 A.S.I. Suraj Bhan of Narcotic Branch,Kamla Market received a secret information that one Rahis Ahmed of D.D.A. Quarters, Anand Nagar, Inderlok (appellant) would be returning from his home at 4.30 p.m. and that he would be carrying heroin with him. This information was passed on to A.C.P.Mr.J.P.Singh and a raiding party was organized comprising H.C. Sukhbir Singh, H.C. Ram Bhagat, Constable

Satbir Singh, Constable Raj Kumar, S.I. Ramesh Rana, Constable Lekha Rani and A.S.I. Suraj Bhan himself. The said raiding party reached at Primary School No. 37 within the area of P.S. Sarai Rohilla at about 4 p.m. and a nakabandi was arranged. At about 4.20 p.m. the accused was apprehended and an option was given to him whether he would like to be searched before a Gazetted Officer or a Magistrate, but he declined. On the search of the appellant a polythene packet from the right dub of his Ahmed was recovered. On opening the same it was found to contain a substance like heroin. On weighing it was found 3-5 grams out of which a sample of five grams was separated. At that time Inspector Ram Saran Singh, S.H.O of P.S. Sarai Rohilla had also reached the spot.

(2) As per the prosecution version the recovered heroin and the sample were packed in two separate pulandas and sealed by A.S.I. Suraj Bhan with inscription 'SVY' and S.H.O. put his seal as 'HC'. The CFSL Form was filled and the seal impressions were also marked thereon.

(3) The appellant was tried and convicted by the Additional Sessions Judge and he was found guilty under Section 21 of the N.D.P.S. Act and was sentenced to undergo R.I. for ten years and a fine of Rs. 1 lakh; and in default of payment of fine he was to further undergo R.I. for one year.

(4) Aggrieved by this Judgment and Order dated 12.2.1992, the appellant has filed this appeal.

(5) In this case, admittedly, the alleged public witnesses. Anil Kumar, Public Witness .-4 did not support the case of the prosecution. According to him nothing was recovered from the accused in his presence. He was called by a constable in the Police Station, Kamla Market and he saw the accused there, who was bleeding from his head. His signatures were obtained on blank papers. Even in his cross examination he did not support the case of the prosecution and denied the suggestion that heroin was recovered from the appellant in his presence.

(6) Now we have to depend upon the statements of the police officials, who are the only remaining witnesses in the case. No doubt it is true that conviction can be based on the sole testimony of the police officials, but in the absence of any public

witness being joined or the public witness not supporting the case of the prosecution, the statements of the police officials are required to be scrutinised with due care and caution in order to see whether the offence is brought home to the appellant beyond reasonable doubts. The provisions of the N.D.P.S. Act are so stringent that it casts a duty upon the prosecution to rule out any possibility of tampering of the sample and false implication of the accused.

(7) In the present case, there are circumstances which create doubt about the prosecution story. The seals allegedly used in this case did not belong to either of the member of the raiding party. No doubt it is true that some times the Investigating Officer or he S.H.O. may not be in possession of their seals having been used in some other case but they have to give an Explanationn to this effect as to in which case they have used their seals earlier and why they are using the seals not belonging to them. In this case there is no Explanationn as to why the Investigating Officer or the S.H.O. did not use their seals while sealing the allegedly recovered heroin and the sample.

(8) Section 55 of the N.D.P.S. Act provides that an officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to make samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.

(9) Besides this, PW-2 Rameshwar Dass, Head Constable Moharrar Malkhana has stated in his examination that on 19.4.91 the sample parcel and CFSL form were sent to CFSL through Constable Satbir Singh. This Constable Satbir Singh has not been examined and his non-examination casts a serious doubt on the prosecution story that the sample delivered to the CFSL was not tampered with. It was the duty of the prosecution to explain that so long as the sample was delivered to the CFSL it was not tampered with. Constable Satbir Singh, who allegedly delivered the sample to the CFSL, would have been the best evidence

who could depose to the effect that so long as the sample remained with him nobody has tampered with it.

9. BESIDES this lacuna, the presence of the S.H.O of the P.S. Sarai Rohilla is also doubtful. It is not the case of the prosecution that the S.H.O. was given this information. When he had no information, the question of his having reached the spot at the time of seizure and arrest does not arise. This also casts a doubt on the prosecution version. Similarly, the presence of S.I. Mahipal Singh of P.S. Sarai Rohilla on the spot is also doubtful. Admittedly, he was also not informed about the secret information. According to him, no efforts were made to join any public witness at the time of the search of the accused. One Ganesh Das was present there, but he has not been made a member of the raiding party or a witness to the recovery.

(10) The report from the CFSL Ex PW-8/B is also not reliable in the present circumstances of the case. There is a cutting in the portion of the result of the analysis. The word 'possible' has been cut and the word 'positive' has been mentioned. The Chemical Examiner, who analysed the sample has not been examined as a witness to show and explain this cutting which is also fatal to the prosecution case. The non-examination of the Chemical Examiner to explain this material cutting in the report is also fatal to the prosecution version. No doubt, the report of the Chemical Examiner is admissible as evidence under Section 293 Cr.P.C. but in a case where there are cuttings on the material point, the officer, who examined the sample becomes a necessary witness.

(11) The most important point which makes the case of the prosecution very doubtful is about the non Explanation of the injuries which were found on the person of the accused. In his statement under Section 313 Cr.P.C. while denying the allegations against him stated that he has been falsely implicated in this case because of his enmity with the local traders who were in league with the local police of P.S. Sarai Rohilla and that he was given beatings as a result of which he sustained injuries and was falsely implicated by planting heroin. The fact that he was in an injured condition when he was in the police station is supported by PW-4 Anil Kumar, who-stated that he was called in the police station and he saw the

accused in the police station, who was bleeding from the head. The non-explanation of this injury which the accused was having at that time makes the case of the prosecution doubtful and gives credence to the defense taken by the accused.

(12) The statement of DW-I Suresh Kumar corroborates the version of the appellant when he stated that on 15.4.91 at about 2.30 or 3 p.m. this accused was apprehended. Achhi. Zikhru Rehman, who is the goonda of the area gave beatings to the accused which resulted in the bleeding from his head. When this witness intervened, he was also beaten up. He along with the appellant was taken to the P.S. Sarai Rohilla. He was released, but the appellant was implicated in this case. DW-2 Bhura also supported the statement made by DW-1 that Zikhru Rehman and his brother caught hold of the accused and started quarrelling with the accused. The accused was given beatings and along with Suresh Kumar he was taken to the Police Station Sarai Rohilla.

(13) The medical examination of this appellant, Rahis Ahmed from Dr. R.M.L. Hospital of that date i.e. 15.4.91 clinches the matter when it was found that he was having an injury on the head and was bleeding. It means that it is not a simple case of recovery of heroin, as alleged by prosecution, but it appears that he was apprehended and given beatings and he was implicated in this case of smack. Whatever may be the case, the fact which remains is that the prosecution has miserably failed to discharge its burden to prove the guilt of the appellant, Rahis Ahmed. The contradictions in the statements of the police officials on material points were also not taken note of by the trial court.

(14) The learned trial court has not appreciated the evidence on record in right earnest. He has not taken note of all these glaring lacunae in the police version. I, set aside the impugned Judgment and Order dated 12.2.1992 and accept this appeal. The appellant, Rahis Ahmed is acquitted of the said charge on the basis of benefit of doubt. It is hereby ordered that he be released from jail, if not wanted in any other case.