

Adeseqren Jackson Vs. State

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Court : Delhi

Decided On : Dec-01-1996

Reported in : 1997IAD(Delhi)557; 65(1997)DLT251

Judge : N.G. Nandi, J.

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

Appeal No. : Criminal Appeal No. 241 of 1994

Appellant : Adeseqren Jackson

Respondent : State

Advocate for Pet/Ap. : Sanjeev Kumar and; Mukta Gupta, Advs

Judgement :

N.G. Nandi, J.

(1) This appeal is directed against the conviction and sentence recorded under Section 21 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'the Act') in Fir No. 42/88, P.S. Palam Airport, by the learned Addl. Sessions Judge, New Delhi in Sessions Case No. 78/89 sentencing the appellant-convict to undergo R.I. for 10 years and fine of Rs. 1.(X) lakh and in default to undergo R.1. for a further period of six months.

The prosecution case, as revealed from the record, shortly stated is that on 26.11.1988, Si Dinesh Chander Shukla was on duty at Igi Airport, Domestic Departure Hall at Gate No. 1. At about 8.40 p.m, security check-up of passengers bound for Indian Airlines Flight No. 1C 184 Delhi-Bombay was in progress and a person presented himself before Si Dinesh Chander for security check-up and for frisking. While Si Dinesh Chander was frisking that person, he found two false testicles along with his natural testicles and he informed inspector Kamal Ram Meena about the said fact whereupon the Inspector informed Acp Prabhakar on telephone, who arrived at 9 p.m. Local police was also informed and Si Ramphal Singh also reached Gate No. 1, Departure Hall. Insp. Kamal Ram Meena enquired about the false testicles but that person did not disclose anything. On arrival, Acp Prabhakar directed Acp Ram Phal Singh to take personal search of that person and in course of the personal search, from the under-wear of that person, two egg shape objects which were having black tape were recovered. Black tape was removed. From each of the egg shape object, a polythene bag was recovered. Each polythene bag contained 50 gms. of brown sugar. 10 gms. of brown sugar was taken as sample from each polythene bag. Two sample parcels were prepared. The remaining brown sugar i.e. 40 Kgs. each was converted into two separate parcels. All the four parcels were sealed at the spot with the seal of RPS. CfsI Form was prepared at the spot and the specimen of the seal Rps was also affixed on the said form. After the use, the seal was given to Insp. Kamal Ram Meena. Case property and the accused were produced before the Sho Joginder Pal, who after verifying the facts, affixed his seal of Jp on the four sealed packets. Specimen of Jp seal was also affixed on CfsI form. Sho then directed Si Ram Phal to deposit the case property in Malkhana. Two sample parcels along with CfsI forms were sent to CfsI on 5.12.1988 through Hc Manwar Kamal. CfsI gave the opinion that the sample parcels gave positive test for heroin. After completion of investigation, charge-sheet was filed against the accused for the offence u/Section 21 of the Act. Charge was framed against the accused for the offence u/Section 21 of the Act. The accused denied the charge and claimed to be tried. The prosecution led oral as well as documentary evidence. Thereafter, the further statement of accused u/Section 313 Criminal Procedure Code was recorded. Learned Addl. Sessions Judge, appreciating the prosecution evidence, oral as well

as documentary, and the defense, found the accused guilty and convicted him for the offence charged and sentenced him, as aforesaid. It is this order of conviction and sentence which is assailed in this appeal by the appellant-convict.

(2) One of the arguments advanced by Mr. Sanjiv Kumar, learned Counsel for the appellant is that the CfsI form has not been deposited with Malkhana Moharrar along with the case property and the CfsI form did not accompany the case property from Mal Khana Moharrar to CfsI and this would entitle the accused to the acquittal as no conviction could be sustained unless it is proved by the prosecution that CfsI form was filled in at the place of occurrence, the same was deposited with Mal Khana Moharrar along with the case property and the same also accompanied the case property to CFSL.

(3) It is submitted by Ms. Mukta Gupta, learned App for the State, that there is evidence to suggest that CfsI form was prepared at the place of incident and that the same was deposited with Malkhana Moharrar; that according to CfsI report, the seals on the sample parcels were compared with the specimen seal which would mean that the CfsI form accompanied the case property to CFSL; that the evidence of Public Witness PW10 and 7 suggests CfsI form having been deposited with Mal Khana Moharrar.

(4) Public Witness -1 Hc Mohammed Usman has stated in his evidence that on 26.11.88, he was working as Mal Khana Moharrar at P.S. Palam Airport. On that day, four parcels sealed with the seal of Rps and Jb were deposited with him by Si Ram Phal; besides articles recovered during the personal search, were also deposited by Si Ram Phal; subsequently on 5.12.88 two sample parcels sealed with the seal of Rps and Jp were sent through Const. Manwar Kamal vide Road Certificate No. 83/21 to the office of CFSL. The remnant of samples were received back. It is further deposed that the Milkman register of the year 1988 contains the entry of the case property of this case at Sl.No. 181 and 358; that it also contains the entry regarding the receipt of remnant from CFSL. The photostat copy of the entry is Ex. Public Witness -1 /A and Public Witness -1 /B. This witness has proved these entries which are stated to be in his hand writing.

(5) Public Witness PW7 Insp. Joginder Pal, the Sho, has deposed that in November, 1988 he was posted as Sho, Ps Palam Airport. At about 11.30 p.m. on 27.11.88, Si Ram Phal Singh came in his office and produced before him the accused present in Court, four sealed packets sealed with the seal of Rps and CfsI form having the specimen seal of RPS. The witness affixed his own seal Jp on all the four sealed parcels as well as the CfsI form after making the verification; that he directed the 10 to deposit the case property with Malkhana Moharrar. In the cross-examination, the witness has been confronted with his previous statement recorded u/Sec-161 Criminal Procedure Code and the witness admitted that in his previous statement, there is no mention of CfsI form. It is stated by Public Witness PW8 CI Bansal, Sr. Scientific Assistant Chemistry, CfsI, Cbi, New Delhi that on 5.12.1988, two sealed parcels sealed with the seals of Rps and Jp, four seal and one seal impression on each parcel respectively were received by him in his office along with specimen seal affixed on the forwarding letter.

(6) Public Witness PW10 Si Ram Phal Singh has stated in his evidence that on 26.11.1988 at about 9.05 p.m. he received Dd Report; that he along with Const. Azad Singh went to the departure hall, near Frisking Booth in the security longe area and met Acp Prabhakar, Insp. Kamal Ram Meena, Si Dinesh Chander Shukla and some other police persons on duty; that he conducted the search of the accused with the help of Si Dinesh Chand Shukla near the Frisking Booth; that CfsI form was also completed and the subsequent seals affixed thereon; that the seal after the use was given to Insp. Kamal Ram Meena; that he brought the accused and the case property at the police station and produced the accused before the Sho along with four sealed parcels and CfsI form; that the Sho verified the facts from the accused and the witness and thereafter affixed his own seal Jp on all the four sealed parcels as well as CfsI Form and the case property along with the CfsI form and the copy of the recovery memo were handed over to the Malkhana Moharrar in the office of the Sho intact without being tempered by anyone. In the cross-examination, it has been stated that in the seizure memo Ex.PW-3/A, it has not been mentioned that CfsI form was filled in and thereupon the specimen seal of Rps was affixed. It is denied that with a view to fill up the lacuna in the seizure memo, subsequently, while preparing the rukka Ex.PW3/B, the witness has mentioned the fact that CfsI form was filled in and the subsequent

seal of Rps was affixed thereon.

(7) Public Witness 1 I Hc Manwar Kamal stated in his examination-in-chief that on 5.12.1988 he was posted at Police Station Palam Airport. On that day he had received two sealed parcels sealed with the seal of Rps and Jp with CfsI form having the same specimen seals from Mal Khana Moharrar for depositing the same in CfsI Office. A road certificate was issued by the Malkhana Moharrar and the copy of the same was given to the witness; that the witness went to CfsI Office, New Delhi and there he deposited the sealed parcels and CfsI forms Along with the copy of Road Certificate and obtained acknowledgement on another copy of the road certificate regarding the depositing of the sample parcels in the office of the CFSL. with the concerned official. In cross-examination, the witness has been confronted with his previous statement u/Section 161 Criminal Procedure Code to suggest that he did not state that he took the CfsI form also. It is further stated that CfsI form was given to the witness by the 10.

(8) It will be seen from the above referred evidence of Public Witness s.I, 7, 8,10 and 11 that according to Public Witness PW1, the Malkhana Moharrar at Police Station Palam Airport, on 26.11.1988 he had received four parcels in all, sealed with the seal of Rps and Jp deposited with him by Si Ram Phal and besides the parcels the articles recovered during the personal search, were deposited by Si Ram Phal to the witness. The witness does not say that along with the sealed parcels, CfsI form duly filled in was also deposited with the witness. It is pertinent to note that the witness referred to Rc No. 82/21 having been sent by him through Const. Manwar Kamal along with sealed parcels. There is absolutely no reference to the receipt/deposit of CfsI form Along with the sealed parcels with the Malkhana Moharrar. Ex. Public Witness PW1/a and 1 /B are the photostat copies of the entries from the original Malkhana register pertaining to the case property. Columns No. 4 and 8 of Ex. Public Witness PW1/A contain the details pertaining to the receipt of case proper' y and sending of same to the laboratory. It does not refer to the CfsI form at all.

(9) Evidence ofPW7 is to the effect that four sealed packets sealed with the seal of Rps and CfsI form having the specimen seal of Rps were produced before him and

he affixed his own seal Jp on all the four sealed parcels as well as on the CfsI form after making the verification. The witness has been confronted with his previous statement to suggest that there is no mention of CfsI form therein made by the witness.

(10) Evidence of Public Witness -8 suggests that in the office of CfsI, four sealed parcels and the specimen seal affixed on the forwarding letter, were received. It is pertinent to note that this witness has not stated anything about the CfsI Form and it is not suggested from his evidence that the four sealed packets along with the forwarding letter containing specimen seal thereon, also accompanied the CfsI Form. That evidence of Public Witness -10 suggests that he produced the accused along with four sealed parcels and CfsI Form before the S.H.O. and the S.H.O. verified the fact from the accused and the witness thereafter affixed his own seal 'JP' on all the four sealed packets as well as CfsI Form and the case property. Along with the CfsI Form and the copy of the Recovery Memo were handed over to the Malkhana Moharrar in the office of S.H.O. intact without being tampered with by anyone. The evidence of Public Witness -11, H.C. Manwar Kamal is to the effect that the witness went to the office of the CfsI, New Delhi and there he deposited the sealed parcels and CfsI Forms along with the copy of the Road Certificate and obtained acknowledgement on other copy of the Road Certificate regarding the depositing of the sample parcels in the office of the CfsI with the concerned official. It is also suggested from the evidence of this witness that CfsI Form was given to the witness by the 1.0.

(11) Thus, it would be seen that according to Public Witness -11, CfsI Form was given to him by the 1.0. and that he carried CfsI Form to the CfsI laboratory. As pointed out above, according to Public Witness -8, Senior Scientific Assistant of CfsI, he only received four sample parcels with seals intact with the forwarding letter having specimen seal affixed thereon. According to Public Witness -7, on all the four sealed sample parcels as well as the CfsI Form, he affixed his seal 'JP' and he directed the 1.0. to deposit the case property and CfsI Form with Malkhana Moharrar whereas Malkhana Moharrar, PW-1, as pointed out above, only deposes about the receipt of two sample parcels sealed with the seals of 'RPS' and 'JP' which were sent to him through Constable Manwar Kamal with Road Certificate

No. 83/21 to the office of CFSL. Thus, what emerges from the above evidence is that the sample parcel did not reach the Malkhana Moharrar. The perusal of Ex. Public Witness -1,/A, which is the entry from the Malkhana Register, refers to the case property in question. Neither Column No. 4 nor Column No. 8 thereof refers to CfsI Form either having been received in the Malkhana or having accompanied the case property from Malkhana to CFSL. From the evidence of Public Witness - 7, the S.H.O, he had asked the 1.O. to deposit the case property with Malkhana Moharrar, whereas the evidence of Public Witness -11 is that CfsI Form was given to the witness by the 1.O.

(12) Thus, the state of evidence as far as the CfsI Form having accompanied the case property being as above and Public Witness -8 having only stated that he only received the forwarding letter with the specimen seal with the sample parcels, Malkhana Moharrar, Public Witness -1, not deposing as regards CfsI Form, the requirement of CfsI Form accompanying the case property from the time of the filling in of the same at the place of occurrence, same accompanying the case property from the stage of seizure to depositing of the same with the CfsI has to be answered in light of the evidence on record and the principle established by the judicial pronouncements.

(13) In the case of Moot Chand v. State reported in 1993 (1) C.C.Cases 564, it has been held by this High Court that in absence of evidence to show that CfsI Form was deposited in the Malkhana and the same was sent with sample to CfsI and the purpose of CfsI Form being with the seal of the sample can be compared with the seal of the CfsI Form, the absence of CfsI Form would create doubt and the accused would be entitled to the benefit of doubt.

(14) In the instant case, as pointed out above, the evidence of Public Witness 1 Malkhana Moharrar, the evidence of Public Witness -8, Senior Scientific Analyst, CfsI Laboratory and the evidence of Public Witness -11 clearly suggest that the CfsI Form was not deposited along with the case property with Malkhana Moharrar and the CfsI Form did not accompany the case property to the CfsI Laboratory and received in the Laboratory and what was received was the forwarding letter with the specimen seal and the sealed samples of the case property would go to

suggest that the requirements of CfsI Form accompanying the case property firstly up to Malkhana Moharrar, deposit of the same with the case property in the Malkhana and the same having remained with the case property right up to the case property was deposited with the Laboratory are not established by the prosecution. The evidence of Public Witness -11, as pointed out above, suggests that CfsI Form was given to him by the 1.0. and Ex. PW-1/A, the entry from the Malkhana Register not referring to CfsI Form at all would create doubt about the CfsI Form having been prepared and accompanying the case property, as required under the law.

(15) In the case of *Rajinder Kumar v. State*, : 63(1996)DLT721 , it has been held by this Court that the CfsI Form should not only be prepared at the place of occurrence when the case property is seized from the accused but the same should accompany the case property right from the recovery till the delivery of the case property to the CFSL. The very purpose of preparation of CfsI Form with specimen seals thereon is that the specimen seals on the CfsI Form are compared with the seals on the case property sent to the CfsI for analysis and report and the absence of evidence to establish the preparation of the CfsI Form at the place of occurrence and the form accompanying the case property to the CfsI would entitle the accused to the benefit of doubt.

(16) As pointed out above, in the instant case, the evidence of Public Witness -1, Public Witness -8, Public Witness - 10 and Public Witness -11 suggest that the requirement in this regard have not been complied with and the conviction of the appellant/accused cannot be sustained on this ground alone.

(17) Thus, it will be seen from the above that there is no evidence to establish that the CfsI Form reached the Malkhana along with the case property. There is no evidence to suggest that CfsI Form accompanied the case property i.e., the sealed packets from Malkhana to CfsI, especially considering the oral evidence and the documentary evidence. Ex. Public Witness -1/A as pointed out above and the evidence of Public Witness -8 suggests that the case property, sealed packets were accompanied the forwarding letter and nothing else i.e. not the CfsI Form. Under the circumstances, I am of the view that there is deficiency of a material link

evidence which causes dent in the prosecution case and persuades me to give benefit of doubt to the appellant/ convict.

(18) The above discussion will reveal that the appeal deserves to be allowed and the conviction recorded and sentence imposed liable to be set aside.

(19) In the result, the appeal is allowed. The judgment recording the conviction of appellant/convict as also the sentence dated 11.8.1994 passed by the Trial Court in F.I.R. No. 42 / 88 P.S.Palam Airport for the offence under Section 21 of the N.D.P.S. Act in Sessions Case No. 78/89 are hereby set aside. The appellant / convict is on bail. His bail bonds hereby stand cancelled.

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