

**Naln Singh Vs. State**

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**Court :** Delhi

**Decided On :** Feb-14-1995

**Reported in :** 1995CriLJ2774; 1995LC44(Delhi)

**Judge :** M.S.A. Siddiqui, J.

**Acts :** Narcotic Drugs and Psychotropic Substances Act - Sections 21

**Appeal No. :** Cri. W. 95/1992

**Appellant :** Naln Singh

**Respondent :** State

**Advocate for Def. :** P.S. Sharma, Standing Counsel

**Advocate for Pet/Ap. :** R.D. Jolly, amices Curiae

**Disposition :** Appeal allowed

**Judgement :**

ORDER

**M.S.A. Siddiqui, J.**

1. The appellant, an inmate of Central Jail No. 1, Tihar Jail, Delhi was convicted for an offence under Section 21 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the 'Act') and sentenced to undergo

rigorous imprisonment for 10 years and a fine of Rs. 1 lac by the learned Additional Sessions Judge, Delhi.

2. According to the prosecution case, on 27-8-1990, the appellant was found in possession of 450 milligrams of heroin in the Central Jail No. 1, Tihar Jail, Delhi. The appellant was searched by the jail warden Kishan Lal (P.W.7) at the behest of Shri B. B. Kaul, Assistant Superintendent Central Jail No. 1. The seizure was effected in the presence of Shri B. B. Kaul and the Jail warden Chand Ram (P. W. 9) and nine small packets containing heroin were recovered from the appellant's possession. The contraband was produced before Shri Darshan Lal Sharma (P.W.2), Deputy Superintendent, Central Jail No. 1. The police was called. Sub Inspector Om Parkash Singh (P.W.10) accompanied, by the police constable Dharam Singh, (P.W.8) arrived at the Central Jail No. 1 and seized the contraband vide seizure memo (Ex. P.W. 2/B). The contraband was weighed in the presence of witnesses, and a sample was taken for Chemical examination. The appellant was arrested and the seized articles were kept in safe custody of the police station. The contraband was found by the expert to be heroin vide report Ex. P.W.10/B.

3. The appellant abjured his guilt and alleged that a false case has been foisted on him. Learned Additional Sessions Judge accepted the prosecution evidence and convicted the appellant.

4. The main contention advanced on behalf of the appellant is that the learned Additional Sessions Judge failed to appreciate the inherent infirmities in the prosecution evidence and that there is no legal evidence in support of the finding that the appellant was found in possession of the contraband. It was maintained that Shri B. B. Kaul, Assistant Superintendent, Central Jail No. 1 was a material witness in this case and he has been withheld by the prosecution for some oblique motive giving rise to an adverse inference against the prosecution case.

5. Learned Additional Sessions Judge, relying upon the evidence of jail warden Kishan Lal (P.W.7) and Chand Ram (P.W. 9), came to the conclusion that on the day in question the appellant was found in possession of the contraband. From the testimony of both these witnesses, it is apparent that the appellant was searched

in the presence of the Assistant Superintendent, Central Jail No. 1 Shri B. B. Kaul and during this search 9 small packets containing heroin were recovered from the appellant's possession. It is pertinent to note here that no seizure memo evidencing seizure of the contraband was prepared on the spot. It is also worth mentioning here that Constable Jai Prakash (P.W.4) testified that on 27-8-90 at about 4.15 p.m. he had recorded the D. D. No. 31-B (Ex. P.W.4/A). On a careful perusal of the said document, it appears that on 27-8-1990 at about 4.15 p.m. a telephonic information was received from the Central Jail No. 1, that 7 PUDIAs of smack had been recovered from two inmates of the Central Jail No 1, namely, Nek Singh s/o Suberam and Suresh Chand s/o Dharam Singh. Sub-Inspector Om Prakash Singh (P.W. 10) deposed that on receiving the D. D. No. 31-B (Ex. P.W.4/A), he proceeded to Central Jail No. 1 and seized 9 PUDIAs containing heroin from the possession of the Dy. Supdt, Central Jail No: 1 Shri Darshan Lal Sharma (P.W.2) vide seizure memo Ex. P.W. 2/B. Surprisingly, neither Nek Singh s/o Suberam nor Suresh Chand s/o Dharam Singh have been prosecuted in this case. Consequently, the dust of doubt raised by the D. D. entry (Ex. P.W.4/ A) must fall on the prosecution. Moreover, the D. D. 31-B (Ex. P.W.4/A) clearly shows that 7 PUDIAs were recovered from the possession of two inmates of the Central Jail No. 1 but the prosecution witnesses Kishan Lal (P.W.7) and Chand Ram (P.W. 9) want us to believe that 9 PUDIAs containing heroin were recovered from the appellant's possession. Thus the evidence of both the witnesses stands falsified by the said D. D. entry (Ex. P.W.4/A). These infirmities and defects in the main version of the occurrence have shaken the foundation of the whole prosecution case to an irreparable extent. Principles of criminal jurisprudence which govern the trial of criminal cases in our country do not permit the ignoring of or brushing aside such a big jerk given to the prosecution evidence.

6. It is apparent from the evidence of Kishan Lal (P.W.7) and Chand Ram (P.W.9) that the appellant was searched at the behest of Asstt. Supdt. of Jail Shri B. B. Kaul. The alleged recovery in the circumstances of this case ought to have been proved by examining Shri B. B. Kaul. Strangely enough, Shri B. B. Kaul, has not been produced in the witness box. Failure to examine this material witness adds to its own weight to the volume of doubt created in the prosecution case as discussed above. Viewing the aforesaid circumstances, I find it unsafe to act upon

the testimony of Kishan Lal (P.W.7) and Chand Ram (P.W.9). Eliminating the evidence of the said witnesses, there remains nothing on record to connect the appellant with the alleged crime.

7. For the reasons discussed above, I allow the appeal and set aside conviction and sentence of the appellant.

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