

Rajni Devi Vs. the State

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Court : Delhi

Decided On : Nov-17-2005

Reported in : 2006CriLJ891; 125(2005)DLT246; 2005(85)DRJ375

Judge : R.C. Jain, J.

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

Appeal No. : CRL. A. 356/2005 and Crl. M. 894/2005

Appellant : Rajni Devi

Respondent : The State

Advocate for Def. : Sunil Kapoor, Adv.

Advocate for Pet/Ap. : R.P. Luthra, Adv

Judgement :

R.C. Jain, J.

1. This appeal is directed against the judgment and order dated 24.3.2005 passed by the learned Special Judge, Delhi, thereby convicting the appellant herein of the offence punishable under Section 21 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (for short the Act) and sentencing her to 10 years of rigorous imprisonment and to pay a fine of Rs.1 lac and in default of payment of

fine to undergo simple imprisonment for one year.

2. The relevant facts leading to the present appeal are that the appellant herein Smt.Rajni Devi was prosecuted by Police Station Narcotic Branch, Kamla Market for the offence under Section 21 of the Act on the allegations that on 14.10.1999 at about 3.15 p.m. near Government Boys Senior Secondary School, she was found in possession of 7 kgms of heroin. She was tried for the said offence in the court of Special Judge, NDPS, Delhi. Charge was framed against her, to which she pleaded not guilty and claimed trial. Prosecution examined 11 witnesses in all. When she was examined under the provisions of 313 Cr.P.C. the accused pleaded her false implication in the case at the instance of a certain Devinder who was working in the court as a clerk and who had some connection with the daughter of the accused namely Puja and who was arrested at the instance of husband of the accused. She denied recovery of any incriminating substance from her possession and pleaded that the police had planted the adulterated samples of diacetylmorphine on her. The accused, however, did not lead any evidence in support of her defense plea but it appears that towards the end of the trial court, on a prayer made on behalf of the accused, fresh samples out of the recovered and seized case property were got re-examined from CFSL. After examination of the fresh samples, CFSL gave a totally different and discrepant report than the report already obtained by the prosecution during the course of investigation. Despite this discrepancy, the learned trial court on a consideration of the entire evidence and material brought on record convicted and sentenced the appellant as above. Aggrieved by her conviction and sentence, the appellant has filed the present appeal.

3. I have heard Mr.R.P.Luthra, learned counsel representing the appellant and Mr.Sunil Kapoor, Additional Public Prosecutor representing the State and have given my thoughtful consideration to their submissions as also have carefully examined the material obtaining on record. Though in the memorandum of appeal, conviction of the appellant was sought to be assailed on a variety of grounds but during the course of hearing, learned counsel for the appellant has primarily confined his attack to only one ground. The ground being that the learned trial court has failed to consider the effect of the second report of CFSL in regard to the

examination of the samples and has discarded the said subsequent report on the ground that it was incumbent upon the accused to have got the percentage aspect clarified from the author of the said subsequent report. Learned counsel for the appellant has invited the attention of the court to CFSL reports i.e. one dated 19.11.1999 obtained by the prosecution during the course of investigation and the subsequent report dated 28.2.2005 in regard to the examination of the 7 samples taken out from the 7 packets containing the heroin allegedly recovered from the appellant and has pointed out major discrepancies appearing therein in regard to the percentage of diacetylmorphine found in the samples sent for examination on two occasions. The report of the CFSL dated 19.11.1999 and 28.2.2005 found the percentage of diacetylmorphine as under:

Samples	Report dated 19.11.1999	Report Dated 28.2.2005
I.	17.81	3.3
II.	17.49	0.74
III.	17.77	4.1
IV.	17.76	0.42
V.	17.33	0.42
VI.	17.85	4.1
VII.	17.37	0.4

4. On the strength of the above discrepancy Mr.Luthra has pointed out that the difference noticed in the percentage of diacetylmorphine found in the two reports of the CFSL is so large that it would show that either no property as alleged by the prosecution was recovered from the accused and it was planted by the prosecution or the case property has changed else the samples could not have given such a discrepant values. The next submission is that if the percentage of diacetylmorphine as given in the subsequent report is to be taken into account, perhaps the total quantity of diacetylmorphine (heroin) which can be said to have been recovered may fall within the category of 'small quantity'. On the other hand Mr.Kapoor has urged that the learned trial court was justified in discarding the subsequent CFSL report and not attaching any importance to it.

5. From a perusal of the judgment of the learned trial court, it would appear that the above aspect was duly highlighted by the learned defense counsel before the trial court as well which though have been taken note of by the learned trial court but has been rejected with the following observations appearing in para 11 and 12 of the judgment of the learned trial court may be noticed:

'11. The variation of the weight in sample as taken on the spot and as found by the FSL was too wide to be reconciled and this obviously had cast doubt for the

veracity of the entire prosecution case. The weight of the sample and the percentage of diacetylmorphine found in the sample are entirely two different things and no analogy can be drawn between the two. If the accused wanted to avail of the benefit of the subsequent FSL report dated 28.02.05 on the percentage aspect then it was incumbent upon the accused to have got the percentage aspect clarified from the author of subsequent FSL report. Had the author of subsequent FSL report got examined in defense then perhaps a plausible defense could be made out.

12. In my considered opinion, the percentage of diacetylmorphine found in the sample and the case property denotes the strength and not the quantity and in fact the percentage only reflects or indicates the extent of purity/potency. Although, no expert opinion is coming forth on this aspect but scientifically it would not be correct to judge the contents of the sample or the case property on the basis of the percentage.'

6. From the above observations of the learned trial court, is manifest that though the learned trial court was conscious of the major discrepancies appearing in the two CFSL reports, still choose to ignore the same on the premise that it was the obligation of the accused to have got the percentage aspect clarified from the author of the subsequent CFSL report. In the opinion of this court once a subsequent CFSL report has been obtained which was contrary or discrepant to the earlier report which formed the basis of conviction it was rather incumbent on the prosecution to have clarified the said aspect rather than putting the onus on the accused to clarify the position. The court was not helpless and could summon the author of the subsequent report so as to render justice in the matter. The subsequent report of the CFSL raised a legitimate doubt about the substance which was allegedly recovered from the possession of the accused. This important aspect could not be lightly brushed aside merely on the ground that the accused has not examined the author of the subsequent CFSL report to clarify the position. The trial court has itself observed and rightly so that had the author of subsequent CFSL report been examined in defense, then perhaps a plausible defense could be made out which will clearly indicate that the appellant herein must have been prejudiced at the trial only for the non-examination of the author of subsequent

CFSL report.

7. Having considered the matter in its entirety and for the aforesaid reasons this court is of the opinion that the impugned judgment and order cannot be sustained and is liable to be set aside and the case needs to be remitted back to the learned trial court for fresh adjudication in accordance with law after examination of the author of subsequent CFSL report dated 28.2.2005 and after affording due opportunity to the accused and the prosecution to make their submissions based on such examination. In the result the appeal succeeds and is hereby allowed. Impugned judgment and order dated 24.3.2005 passed by Ld. Special Judge is hereby set aside and the case is remanded to the learned trial court for fresh adjudication in accordance with law after examination of the author of CFSL report dated 28.2.2005 and after affording due opportunity to both sides to make their further submissions in that behalf. The appellant is directed to appear before learned trial court on 5.12.2005 for receiving further directions in the matter. The appeal and all pending applications stand disposed of accordingly. The trial court record be sent back forthwith.

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