

Shounath Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/758397

Court : Rajasthan

Decided On : Jul-16-1997

Reported in : 1998CriLJ169

Judge : S.C. Mital, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 15, 29 and 50; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Jail Appeal No. 478 of 1996

Appellant : Shounath

Respondent : State of Rajasthan

Advocate for Def. : S.M. Singhvi, Public Prosecutor

Advocate for Pet/Ap. : K.K. Shah, Adv.

Disposition : Appeal allowed

Judgement :

S.C. Mital, J.

1. This appeal is directed against the judgment dated 27-8-96 passed by learned Special Judge, N.D.P.S. Cases, Chittorgarh in Sessions Case No. 38/95 whereby the appellant Shounath has been held guilty under Section 8 read with 15 of the

Narcotic Drugs and Psychotropic Substances Act (in short N.D.P.S. Act) and sentenced to 10 years' rigorous imprisonment and a fine of Rs. one lac or in default one year rigorous imprisonment. The other co-accused Nanunath was acquitted of the offence under Section 8/29. N.D.P.S. Act.

2. The prosecution story as revealed from the F.I.R. Ex. P.I is that on the basis of secret information on 17-9-94 the S.H.O., Bengu Netrapal Singh and A.S.I. Mahavir Singh went to private Bus Stand. A bus bearing No. R J H 3149 came from the side of village Chechi and the appellant alighted from the bus with two bags. The appellant took the bags at some distance and sat on those waiting for the bus for Bhilwara. S.H.O. Netrapal Singh along with two motbirs Chhitra Gujar and Mangi Nath inquired from the appellant his name and for taking search informed him of his right to be searched in the presence of a Gazetted Officer or a Magistrate under Section 50 of the N.D.P.S. Act. The appellant gave his consent for search by the S.H.O. Netrapal Singh, who on search found 25 Kgs. & 19 Kgs. poppy straw in the bags. Two samples from each bag were taken and sealed, which were marked A1 and A2 and B1 and B2. The bags were also sealed and marked A and B. The chemical examination of the samples gave positive test for the presence of chief constituents of opium and it were dried crushed capsules of poppy from which juice had been extracted. After completing the investigation charge-sheet was submitted against the appellant and Nanu Nath from whom the appellant obtained the dried crushed capsules of poppy.

3. The appellant and Nanu Nath denied the charges levelled against them. Appellant Shounath stated in his statement under Section 313, Cr.P.C. that he was sick. He had gone to the temple of Bor. He was caught at the Bus Stand but no poppy capsules were recovered from him. The prosecution examined 10 witnesses. The accused did not produce defence evidence. The learned Special Judge after appraisal of the prosecution evidence came to the conclusion that poppy capsules were recovered from the possession of the appellant and convicted him as stated above. The above co-accused Nanu Nath was, however, acquitted of the charge under Section 8 read with 29, N.D.P.S. Act.

4. I have heard the arguments of the learned counsel for the appellant and the learned Public Prosecutor.
5. The learned counsel for the appellant has raised twofold arguments. Firstly the prosecution has failed to prove the factum of recovery of contraband poppy capsules from the possession of the appellant. According to him the prosecution evidence is replete with material contradictions and the prosecution version about search and seizure of poppy capsules from the possession of the appellant is wholly unreliable. Secondly the prosecution has also failed to prove that the samples were kept sealed and intact from the date of the seizure to the date the samples were deposited in the Forensic Science Laboratory, Jaipur. The prosecution has not produced before the Court the specimen seal memo and there is every reasonable doubt that the sample sent for chemical examination did not contain the alleged recovered article.
6. Netrapal Singh, S.H.O. (P.W. 5) stated that a bus came from Chechi side and two bags were brought down by a person and took them at some distance and sat on the bags awaiting for the bus to Bhilwara. Sarbat Singh and Kumbha Ram Constables were present at the Bus Stand. However, in the cross-examination he admits that he did not see the accused bringing down the bags from the bus. He was told about this fact by Sarbat Singh and Kumbha Ram. Thereafter he states that he saw the accused taking only one bag at some distance and one bag he had only taken there. Mahavir Singh A.S.I. (P.W. 4) has also deposed that he did not see the accused taking down the bags. When he reached at the Bus Stand with the S.H.O. he was sitting on the bags. Statements of Sarbat Singh (P.W. 9) and Mangi Nath (P.W. 10) are important because they were present when the bus from Chechi arrived at the Bus Stand. Sarbat Singh has stated that the bags were taken out from the bus through the rear gate. Mangi Nath (P.W. 10) on the other hand has stated that the bags were taken put from the roof of the bus but at the same time denies that he saw the accused himself bringing down the bags from the bus. Mangi Nath has also stated that the accused was sitting near the bags and admits that many other persons were also sitting near the bags. When Mangi Nath was asked to explain which version of his statement is correct as to whether he saw the appellant taking down the bags from the bus or not, Mangi Nath said

that he saw the accused bringing down the bags from the bus. Whereas earlier he had stated that he did not see it. Thus he has given self-contradictory statements about the possession of the accused over the two bags. I am of the view that there are significant and material contradictions in the statements of all the above police witnesses which have not been considered by the learned trial Court while appreciating the prosecution evidence. Ora Prakash (P.W. 1) Conductor of the bus has not supported the prosecution and the driver of the bus has not been examined by the prosecution. Chhitra Lal (P.W. 2) has also given a different version that when the appellant was caught by the police at the Bus Stand he was loading the bags in the Bus for Bhilwara. I entirely agree with the learned counsel for the appellant that the prosecution evidence on the point of possession of the bags with the appellant suffers from serious and material contradictions and it is wholly unreliable. The prosecution has failed to prove that the two bags were found in the possession of the appellant.

7. It is surprising that while preparing the seizure memo the seal impression by which the samples and the bags were sealed has not been affixed on the seizure memo Ex. P.2. Specimen seal memo has also not been prepared. The letter Ex. P.5 issued from the Office of S.P., Chittorgarh shows that specimen seal was sent along with the letter but prosecution has not produced in the Court that specimen seal memo and it is not proved that what was that seal with which the samples were sealed and the seal impression was sent to the Forensic Science Laboratory. This fact is also not clear from the Forensic Science Laboratory report Ex. P.9. It is a serious infirmity in the prosecution case which has not been at all considered by the trial Court. Besides this, Netrapal Singh has not stated that when and to whom he deposited the samples to be kept safe and sealed in the Malkhana. Ishwar Singh (P.W. 6), however, states that four sealed packets of the samples and the bags were deposited by Netrapal Singh, S.H.O. on 17-9-94 and delivered two packets of the samples on 19-9-94 but changed the version and stated on 19-10-94 to Pushpendra Singh, Constable for depositing the samples in the Forensic Science Laboratory, Jaipur. The date of delivery of the two samples to Pushpendra Singh, Constable has been mentioned 19-9-94 in the column No. 10 at two places in Malkhana Register Ex. P. 10. Pushpendra Singh (P.W. 3) has deposited the samples in the Forensic Science Laboratory on 20-10-94 as

revealed from the receipt Ex. P.6. Pushpendra Singh (P.W.3) states that he took the samples from the Malkhana on 19-10-94 from Ishwar Singh, In-charge Malkhana. Ishwar Singh has explained this contradiction about the handing over of samples to Pushpendra Singh on 19-10-94 and the entry of date 19-9-94 in Malkhana Register that he inadvertently mentioned the date 19-9-94 and actually samples were handed over to Pushpendra Singh on 19-10-94. The explanation does not appear to be satisfactory. I am of the view that the prosecution has also failed to prove that the samples were kept intact and in sealed condition till the samples were deposited in the Forensic Science Laboratory, Jaipur. In this case the prosecution has miserably failed to prove as to what was the description of that seal by which the samples were sealed at the time of the seizure of the articles. Therefore, the chemical examination report Ex. P.6 cannot be formed the basis for the conviction of the accused.

8. In view of the above discussion, I come to the conclusion that the offence under Section 8 read with 15 of the N.D.P.S. Act has not been proved against the appellant and he deserves to be acquitted. The appeal is hereby allowed. The impugned judgment and sentence dated 27-8-96 passed against the appellant by Special Judge, N.D.P.S. Cases, Chittorgarh is hereby set aside and the appellant Shounath is acquitted of the charge under Section 8 read with 15 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#). He shall be released forthwith if not required in any other case.