

Mohammed Shafi Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-22-1989

Reported in : 1989(2)WLN107

Judge : N.C. Kochhar, J.

Appeal No. : S.B. Cr. Appeal No. 212 of 1989

Appellant : Mohammed Shafi

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

N.C. Kochhar, J.

1. The appellant was tried in case F.I.R. No. 158 87 of Police Station, Ganj, Ajmer and was convicted under Section 8 read with Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (the 'Act') and under Section 4 read with Section 25 of the Arms Act vide judgment dt. 27-3 89 passed by Shri Bhanwaru Khan, Additional Sessions Judge No. 1, Ajmer, who sentenced him to undergo rigorous imprisonment for a period of 10 years and, to pay a fine of Rs. 1 lac under the former offence and to undergo rigorous imprisonment for a period of 6 months under the latter offence. The prosecution story, in short, was as under:

2. On 23-12-1987 PW 5 Sahib Ram was posted as Dy. Superintendent of Police, Ajmer (South). On receipt of a Secret Information he organised a raiding party consisting of Hari Prasad Katara, S.H.O., Police Station, Clock Tower, Rajendra Singh, SHO, Police Station, Ramganj, Shantilal, ASI, Police Station, Adarsh Nagar, Constables Fateh Singh, Raghuveer Singh, Bahadur Singh and Ram Chand. The Police Party went in a jeep to Inderkot area where they joined Anwar Hussain and Mohammed Rafiq, two persons from amongst the members of public with them. At about 3.30 p.m. that after-noon the appellant was found coming with an attach-case in his hand and address and on the pointing out of the informant the appellant was stopped by the Police Party. On enquiry, the appellant gave his particulars regarding name and on search the Police Party found a polythene bag in the right pocket of the appellant's pant which was found to be containing 155 grams of Charas. When the attache case was opened the Police Party found a 'Gupti' besides a sum of Rs. 403.65 paisa wrapped in a green colour cloth piece. The appellant did not have any licence either to possess the Charas or to possess the Gupti. A sample of 30 grams of Charas was separated and the sample as well as the remaining Charas were converted into two separate sealed parcels. Sahib Ram took all these articles into possession vide memo Ex P 2, which was attested by Hari Prasad Katara, Rajinder Singh, Shanti Lal and the two public witnesses. Sahib Ram sent the appellant with the case property along with Constables Pitha Singh and Datar Singh to Police Station, Ganj, Ajmer where she case was registered against the appellant. The same was sent to the State Forensic Science Laboratory, Jaipur (the 'Laboratory') from where report Ex.P 8 was received showing that the sample was that of Charas. After completion of the investigation, the Police filed the challan against the appellant in the Court of the learned Judicial Magistrate who committed the case for trial to the Court of Sessions. The trial was conducted by Shri Bhanwaru Khan, Additional Sessions Judge. No. 1. Ajmer who has found the appellant guilty and has convicted and sentenced him as noted above. Feeling aggrieved, the appellant has come up in appeal to this Court.

3. I have heard the learned Counsel for the parties and have perused the record of the case.

4. In order to prove its case the prosecution had examined Constable Raghuveer Singh, Mohammed Rafiq Constables Gheesa Ram, Constable Bahadur Mal. Dy. S.P. Sahib Ram, Head Constable Prahalad Singh, SHO, Jaipal Singh as PW 1 to PW 7, respectively. PW 1 to PW 3 and PW 5 have been produced as eye-witnesses of the occurrence where as PW 4 Gheesa Ram had taken the sample to the Laboratory and had deposited the same there. PW 6 is the Incharge of Malkhana where the case property was deposited after its recovery and PW 7, Jaipal Singh, SHO, Police Station, Ganj, Ajmer had investigated the case after its registration in the Police Station.

5. According to the case of the prosecution, the Police had joined Mohammed Rafiq PW 2 and one Anwar Hussain from amongst the members of the Public and the recovery of Charas and Gupti had been made in their presence. Mohammed Rafiq has denied that he was ever joined in the investigation and had deposed that he had seen the appellant for the first time in the Court. He was cross-examined by the learned P. P. but nothing had been taken out from him. Raghuveer Singh and Bahadurmal who have been examined as PW-1 and PW-3 respectively have supported the case of the prosecution in their statements on oath. In cross-examination PW-1 Raghuveer Singh deposed that the Charas recovered from the appellant was of black and blue colour and denied that the colour of the Charas was brown. In his cross-examination Babadurmali PW-3 could not tell as to what was the size of the attache-case which was recovered from the person of the appellant. Neither of these two witnesses have attested the recovery memo which has been attested by Hari Prasad Katara, Rajinder Singh and Shantilal besides by the two public witnesses. It is further admitted by Raghuveer Singh that his statement was recorded on 24-12-87 i.e. after a day of the date of the occurrence. The presence of Raghuveersingh & Bahidurmali, in these circumstances, appears to be doubtful. The non-production of the other public witness namely Anwar Hussain besides the three Police Officers who have attested the recovery memo, without any explanation, casts great doubt on the case of the prosecution.

6. There is another aspect of the matter. Although Sahib Ram has deposed that he had sealed the Gupti at the spot, no seal was found on it when it reached the police station and when it was produced in the Court at the time of examination of

the witnesses This is the case of the prosecution that the sample and remaining Charas were converted into sealed parcels and had been handed over along with the Gupti to Constables Pitha Singh and Datar Singh who took the same and the accused to the Police Station. Neither of the two Constables have been examined to depose that the seals on the samples remained intact and they were not tampered with during the time they remained in their possession. Similarly, according to the case of the prosecution, Gheesaram PW-4 had taken the sample from the Malkhana of the Police Station and had deposited them in the Laboratory at Jaipur. Not a word has been said by Gheesaram to show that the seal on the sample remained intact and they were not tampered with during the time it remained in his possession.

7. For all the reasons I am of the view that the learned trial court has erred in coming to the conclusion that the prosecution had succeeded in proving its case against the appellant.

8. Consequently, I accept the appeal, set aside the conviction and sentences passed by the learned trial court and acquit the appellant. He is in custody. He should be released forthwith if not wanted in any other case. The attached case and the sum of Rs. 403-65 paise and other articles belonging to the appellant and recovered from his possession be returned to him without any delay.