

Mohammed Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-17-1989

Reported in : 1989(2)WLN588

Judge : N.C. Kochar, J.

Appeal No. : S.B. Cr. Appeal No. 407 of 1988

Appellant : Mohammed

Respondent : State of Rajasthan

Judgement :

N.C. Kochar, J.

1. Appellant Mohammed was tried in case FIR No. 15 dated 4-3-1988 of Police Station, Chauhtan district Banner by Shri Brij Lal, Additional Sessions Judge, Barmer, under Section 21 of the Narcotics Drugs and Psychotropic Substances Act, 1985 and was sentenced to undergo rigorous imprisonment for period of 15 years and to pay fine of Rs. 1,00,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of one year, vide judgment and order dated 18-8-1988.

2. The prosecution story was as under. On 4-3-88, at about 7.30 p m. PW 8 A S I. Shiv Chand received a secret information in Police Station, Chauhtan that the

appellant was dealing in drugs and on that date he has agreed to sell one kg of Heroine and would come to Chauhtan via Paradia with that quantity of Heroine. He recorded this information in the daily diary and brought this to the notice of PW 7 Ramsingh, who was then posted as the S.H.O. of that Police Station. The S.H.O. informed PW 1, who was then working as Deputy Superintendent of police and was present in Police Station, Chauhtan. A police party, Consisting of the SHO, ASI Shiv Chand and other police staff, was formed and they all went in a jeep to the place of occurrence. On the way, they met Gajja Ram s/o. Shri Bheru Ram and Ganga Ram s/o Kesar Ram near the crossing of Ransar and they were joined in the police party as independent public witnesses. The police party stopped the jeep near pillar at a distance of 10 km from the police station and at a short distance therefrom, the party waited for the appellant. At about 9 00 p.m., the appellant was found coming towards the place of occurrence and at that time he was having a big (Taila) with him. The appellant was asked to stop, but he started running He was apprehended with the help of the police staff. The bag was found to contain a polythene bag, in which the police party found power, which was tested by the Deputy Superintendent of Police, the S.H.O the A.S.I. and the two public witnesses, who found the same to be Heroine. Since there was no light at the place of the occurrence and since the police party did not have the scale and weights with them, the appellant along with the case property was brought to the police station, At the police station, the heroine was weighed and was found to be weighing 875 grams. A simple, weighing 30 grams, was taken and the sample as well as the remaining heroine were converted into two different sealed parcels The appellant was arrested. The case property was deposited in the Malkhana. In the Police Station, the Deputy Superintendent of Police gave written report Ex. P. 3 to the SHO at 11.45 p.m. that night and on the basis of the same, formal FIR No. 15 was recorded. The SHO took over the investigation and recorded the statement of the witnesses. He inspected the place of occurrence on 22-3-1988 and prepared its site plan Ex. P 14. The case property was sent to the State Forensic Science Laboratory, Jaipur, from where report Ex. P 15 was received. After completing the investigation, the police filed challan against the appellant in the Court of the learned Munsif & Judicial Magistrate, who committed the case to the Court of Sessions, where the appellant was tried, convicted and sentenced, as stated

above. Felling aggrieved, the appellant has come up in appeal.

3. I have heard the learned Counsel for the appellant, the learned Public Prosecutor for the State and have also perused the record of the case. From the record, I find that PW 3 Gajja Ram and PW 4 Ganga Ram, who were joined as Public witnesses, have not supported the case of the prosecution and have deposed that they were called to the Police Station where they were made to sign some documents and that they had never seen the appellant and also that they never tested heroine, during their life-time. According to Gangaram, he was called as he was known to the police of Police Station, Chautan and according to Gajja Ram, he had been cited by the police as a witness in 5/7 other cases of the Police Station, also, PW 1 Prem Narain Puniya when asked about the witnesses, replied that he did not know whether Gangaram and Gajja Ram were the stock witnesses of the police or not. Although it has been stated by Prem Narain Puniya. Ramsingh and Shiv Chand that the powder was tested not only by them but also by the public witnesses, no such suggestion was given to either of these two witnesses even at the time of cross-examination by the learned Public Prosecutor, who was granted permission to cross-examine them and it was only during cross-examination by the appellant that they stated that they had never tested the heroine. It was also not suggested to the witnesses that they had been joined from the crossing of Ramsar. Admittedly, the police had prior information and no explanation is coming forward as to why the persons who were residing near the place of the occurrence or other respectable persons from near the Thana of Chauhtan were not joined in the police party.

4. Learned Counsel for the appellant has contended that even if it be assumed that the appellant was apprehended and some powder was recovered from him, the prosecution has failed to prove that the sample examined by the Forensic Science Laboratory was the same which was prepared at the time of recovery of the powder.

5. It may be toted that according to PW 2, who is and official of the Office of the Superintendent of Police, Barmer, the sample was sent to the Laboratory with the seals of engraving 'RSR.' Where as, according to PW 6 Rawat Ram, the

Constable who took the sample, the sample was having the seal engraving 'Thana Adhikari, Police Station, Chauhtan.'

6. The case of the prosecution that the sample prepared at the time of recovery was sent for examination, also thus, becomes doubtful.

7. It is also not forthcoming as to how the FIR was not recorded in the register meant for that purpose in the Police Station and why the separate report Ex. P 3 was written by the Deputy Superintendent of Police and given to the SHO for recording the FIR. The copy of the formal FIR bearing No. 15 dated 4-3-1988 has also not been proved on record to enable the Court to know at what time the FIR was in fact recorded.

8. It is also to be noted that where as according to the case of the prosecution, the police party left the police station in the jeep and went to the spot which is situated at a distance of 10 km. from the Police Station and after apprehending the appellant, the police party came back to the police station directly, the copy of the log book, proved on record as Ex.D. 1, shows that the jeep left the police station, Chauhtan at 8.00 p.m. and returned at about 9.45 p.m. after covering a distance of 46 km. No explanation is coming forward as to why scale and weights were not taken by the party while going to the spot, when they had prior information about the accused-appellant coming with the heroine for the purpose of sale and why the Police 'Kariyavahi' was not done at the spot and the explanation that there was no light and the light of the battery could not be used as the battery would have gone weak, cannot be accepted as the satisfactory explanation in the circumstances of the case. There is further no satisfactory explanation as to why the site plan was prepared after about 18 days of occurrence and the explanation given by the SHO that he remained busy cannot be said to be a satisfactory one.

9. In view of my above discussion, I am of the opinion that the prosecution miserably failed to bring home the offence to the appellant and as such the conviction and sentence passed by the learned trial Court cannot be upheld.

10. Consequently, I accept the appeal, set-aside the conviction and sentence passed on the appellant and acquit him. He is in jail. He should be released

forthwith, if not wanted in any other case.

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