

Hari Ram and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-04-2008

Reported in : RLW2009(1)Raj904

Judge : K.S. Rathore, J.

Appellant : Hari Ram and ors.

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

K.S. Rathore, J.

1. The present criminal appeal is directed against the impugned judgment dated 5.2.2005 passed by the Additional Sessions Judge, Beawar, whereby the accused-appellants have been convicted under Section 8/15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the Act of 1985') and sentenced to undergo rigorous imprisonment for 10 years with a fine of Rs. 1,00,000/-each, in default of payment of fine to further undergo rigorous imprisonment for one year each.

2. Briefly stated that facts of the case are. That on 3.6.2003 at about 10.00 p.m., Durga Prasad, ASI along with police party of Police Station Beawar was on

patrolling as per the direction of the Superintendent of Police. He carried out 'Nakabandi' near Chungi-Naka of Masuda Road, Ajmer. During 'Nakabandi', they were informed by the Police Station Beawar City on wireless that one truck bearing No. RJ-19/G-3381 is coming from the side of Ashapura Temple carrying some bags containing contraband in it. On the basis of the above information, the police party tried to stop the truck but the driver did not stop the truck. Thereafter Shri Radhey Shyam Bhatt, SI followed the truck in the jeep and at about 11.15 p.m. the said truck was intercepted and stopped by the police party, wherein 3 persons were sitting. Upon asking, they disclosed their names as Hariram S/o Dhannaram, Babulal S/o Chhogarm and Kishnaram S/o Sukhram, R/o Artiya Khurd, Police Station Bhopalgarh, District Jodhpur. Two independent Motbirs were called before whom search of the truck was conducted. Upon search, 81 bags containing opium doda were recovered. Necessary recovery memo and other documents relating to search were prepared at the spot and all the accused persons found in the truck were arrested and the truck was seized and investigation commenced. During investigation, the statements of the police party as also of other witnesses were recorded.

3. After completion of the investigation, challan against all the three accused persons was Filed in the Court of Additional Sessions Judge, Beawar. The trial Court having gone through the material and evidence collected during investigation and placed before it, framed charges against the accused-appellants for the offence under Section 8/15 of the Act of 1985, who denied the charges and claimed trial. During trial as many as 17 witnesses were examined by the prosecution in support of its case and also got exhibited some documents. The statements of the accused-appellants were recorded under Section 313 Cr. P.C. However, no witness in defence was examined.

4. The Additional Sessions Judge, Beawar vide its impugned judgment dated 5.2.2005 having heard rival submissions of the respective parties and after carefully going through the material available on the record, convicted and sentenced the accused-appellants in the manner stated herein above.

5. The impugned judgment dated 5.2.2005 has been challenged by the accused-appellants on the ground that there are major contradictions, omissions and improvements in the statements of the prosecution witnesses on the material point and in such circumstances, testimony of these witnesses should not have been relied by the trial Court while passing the impugned judgment of conviction and sentence. It is further alleged that mandatory formalities have also not been completed by the SHO after seizure of the contraband and the truck as envisaged under Section 42 of the Act of 1985. Since the mandatory requirements under Section 42 of the Act of 1985 have not been completed, therefore, the seizure itself is not valid.

6. The main contention of the learned Counsel for the accused-appellants is that out of total 81 bags which were seized, only from one bag two samples were taken and sent for FSL report and as per the FSL report, contraband which was observed was less than the commercial quantity and thus, as the accused-appellants have already undergone the sentence of 5 years and 3 months in custody, therefore, in view of the ratio decided by the Hon'ble Supreme Court in the case of E. Micheal Raj. v. Intelligence Officer, Narcotic Control Bureau, reported in : 2008 CriLJ2250 , the sentence awarded to the accused-appellants deserves to be reduced to the period already undergone by them considering the fact that the quantity of contraband recovered from one bag is observed as less than the commercial quantity as the weight of one bag was 38 kgs.

7. Learned Counsel for the accused-appellant, in support of his submissions, placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of Gaunter Edwin Kircher v. State of Goa Secretariat Panaji Goa reported in 1993 SCC (Cri.) 803, wherein the Hon'ble Supreme Court has observed as under:

Narcotic Drugs and Psychotropic Substance Act, 1985 - Section 27, Expln. (1)- Small quantity'- Defined by Central Govt. notification dated November 14, 1985 as quantity of 5 gms or less - Two pieces of charas, one weighing 5 gms. and the other 7 gms, alleged to have been recovered from the possession of appellant But only the piece weighting 5 gms. sent for chemical analysis-Report of chemical analysis confirming that the piece contained charas In view of failure to send the

alleged piece weighing 7 gms for chemical analysis, held, possession of more than the small quantity of charas not established beyond reasonable doubt Procedure for sending the substance for chemical analysis indicated Prevention of Food Adulteration Rules, 1955, Rules 22 and 22-B-Drugs and Cosmetics, Act, 1940, Section 23.

8. After placing reliance on the aforesaid judgment, the learned Counsel for the accused-appellants further submits that this law is still hold field and has not been overruled as yet and applying the ratio decided by the Hon'ble Supreme Court and in the facts and circumstances of the present case, the accused-appellants are entitled to be released forthwith.

9. Learned Counsel for the accused-appellants has given much emphasize that he is not arguing the appeal on merit for acquittal, but arguing on the point that since the contraband recovered from the one bag from which samples were taken, as per the FSL report, is less than the commercial quantity, therefore, in view of the ratio decided by the Hon'ble Supreme Court in the case of Gaunter Edwin Kircher v. State of Goa Secretariat Panaji Goa (supra), and in the case of E. Micheal Raj. v. Intelligence Officer, Narcotic Control Bureau (supra), the sentence awarded to the accused-appellants be reduced to the period' already undergone by them in confinement.

10. Per contra, learned Public Prosecutor appearing for the State has strongly controverted the submissions made by the learned Counsel for the accused-appellants and submits that a huge quantity of contraband has been recovered from the possession of the accused-appellants as 81 bags containing doda-post have been recovered which is not disputed and all the 81 bags were weighed by Shri Shivcharan, Constable and each bag contained 38 Kgs. Doda-post powder and out of total 81 bags, two samples of 500 gms. each were taken from one bag and sent to the FSL for chemical examination and all the 81 bags containing doda-post were seized and the total weight of these bags comes to 3,078 kgs.

11. To strengthen his submissions, learned Public Prosecutor referred the judgment dated 15.9.2005'passed by the Jodhpur High Court in S.B. Criminal Appeal No. 1050/2002 - Udallal v. State and also placed reliance on the judgment

rendered by the Hon'ble Supreme Court in the case of State of Rajasthan v. Udai Lal, reported in 2008(3) Supreme 671, whereby the Hon'ble Supreme Court considering the judgment dated 15.9.2005 passed by the Jodhpur High Court in the case of Udai Lal v. State (supra), has observed that the High Court has not properly appreciated and examined the statements of the witnesses and also not properly appreciated as to how huge quantity of contraband recovered from 119 bags has been considered to be less than the commercial quantity. Resultantly, the Hon'ble Supreme Court while setting aside the order of the High Court, remanded the matter back to the High Court for fresh adjudication on merits as indicated in the judgment of the Hon'ble Supreme Court.

12. So far as minor contradictions and discrepancies in the statements of the prosecution witnesses are concerned, learned Public Prosecutor has placed reliance on the judgment recently rendered by the Hon'ble Supreme Court in Criminal Appeal No. 800/2008 (arising out of SLP (Cri.) No. 1434/2007) - Ram Kumar v. Central Bureau of Narcotics, decided on 5.5.2008, wherein the Hon'ble Supreme Court has observed that 'So far as alleged discrepancies in the testimony of PW2 and 4 are concerned, we find that there are minor variations which do not in any way affect the credibility of evidence of these witnesses.'

13. In rejoinder to the submissions made by the learned Public Prosecutor, the learned Counsel appearing for the accused-appellant has referred the main judgment passed by the Jodhpur High Court in the case of Udai Lal v. State (supra) and also referred the judgment of the Hon'ble Supreme Court, whereby the matter has been remanded back to the High Court for fresh adjudication and submitted that it is simply a remand order and the Hon'ble Supreme Court has not laid down any law to the effect that sample from each bag containing contraband has not been sent for FSL report and the ratio decided by the Hon'ble Supreme Court is not applicable to the facts and circumstances of the present case, on the contrary, the ratio decided by the Hon'ble Supreme Court in the case of Gaunter Edwin Kircher v. State of Goa Secretariat Panaji Goa (supra), is application to the present case.

14. I have heard rival submissions of the respective parties and carefully gone through the Impugned judgment dated 5.2.2005 passed by the trial Court. I also perused the judgments referred before me and carefully gone through the evidence and material available on the record.

15. It is not disputed by the learned Counsel for the accused-appellants that 81 bags of doda-post powder were recovered from truck No. RJ-19/G-3381, but only challenge on behalf of the accused-appellants is on the ground that mandatory provisions of Section 42 of the Act of 1985 have not been properly complied with.

16. For this purpose, this Court deem it appropriate to reproduce Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985, which reads as under:

42. Power of entry, search, seizure and arrest without warrant or authorisation - (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue Intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Court and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section

(1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

17. As per the provisions of Sub-section (1) of Section 42 of the Act of 1985, any such officer or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government is entitled to recover.

18. It is not disputed that Shri Durga Prasad, S.I. has received the wireless message from Police Station Beawar City and upon information, search was undertaken and as per Sub-clause (1) of Sub-section (1) of Section 42 of the Act of 1985, the S.I. has detained the truck and search the same and was authorised

to arrest the person having ample reasons to believe to have committed offence punishable under this Act.

19. Mere allegation that mandatory provisions of Section 42 of the Act of 1985 have not been complied with, does not survive as at the time of search the mandatory provisions of Section 42 of the Act of 1985 were fully complied with.

20. Further challenge to the impugned judgment is on the ground that out of total 81 bags recovered from the truck containing opium doda, two samples from only one bag were taken and in these circumstances, it will be presumed that only one bag was containing opium doda. The FSL report used against the accused-appellants is of one bag and in the eye of law, only recovery of one bag weighing 38 kgs. of opium doda will be read against the accused-appellants and the remaining 80 bags cannot be termed as these were also of opium doda without having FSL report for these bags. Hence, the impugned judgment passed against the accused-appellants cannot be said to be justified taking into account the 81 bags of opium doda and the same deserves to be quashed and set aside in the light -of the ratio decided by the Hon'ble Supreme Court in the case of Gaunter Edwin Kircher v. State of Goa Secretariat Panaji Goa (supra).

21. In this regard, I have carefully gone through the statements of the prosecution witnesses as also the recovery notes/memos.'

22. As per the recovery memo, 81 bags containing doda-post powder were recovered from the truck. Each bag was opened and upon opening of the bags it was observed that all 81 bags containing doda-post powder in plastic bags. To confirm whether it is doda-post or not, Motbirs tested the same and they confirmed that all the bags containing doda-post powder. All the 81 bags were sealed after taking two samples from one bag. It is also an admitted fact that the accused-appellants were not having valid licence for it and after ascertaining the fact that all the 81 bags containing doda-post powder, out of one bag two samples of 500 gms. each were taken and sent for FSL report. These samples were marked as A-1 and A-2 and after taking samples, all the 81 bags were sealed and marked from B-1 to B-81 and upon weighing all the 81 bags, the total weight comes to 3,078 kgs.

23. I have also carefully gone through the chemical examination report Ex. P. 19 conducted by the State Forensic Science Laboratory, Rajasthan. As per the FSL report, the packets marked A-1 and A-2 each contained two polythene bags containing yellowish brown coloured powdered vegetable matter which was packed in separate cloth covering of each packet. The substance contained in each of the packet marked A-1 and A-2 weighed 550 gms. alongwith two polythene bags in each packet.

24. On micro chemical examination, extract of the sample contained in each of the packet marked A-1 and A-2 gave positive tests for the presence of chief constituents of opium, hence, the samples were of dried crushed capsule of opium poppy.

25. I have carefully examined the statements of the prosecution witnesses namely; PW. 1 Shyam Singh, PW. 2 Girdhari Singh, PW. 3 Brijmohan, PW. 4 Bheru Singh, PW. 5 Mahendra Singh, PW. 6 Radhey Shyam Bhatt, PW. 7 Durga Prasad, PW. 8 Randheer Singh, PW. 9 Satpal, PW. 10 Shivcharan, PW. 11 Kailash, PW. 12 Surendra Singh, PW. 13 Dayal Singh, PW. 14 Karansingh, PW. 15, Nemsingh, PW. 16 Govindprasad and PW. 17 Rajendra Bhanawat.

26. Upon careful perusal of the statement of the prosecution witnesses, it is no doubt that the prosecution is able to prove the guilt against the accused-appellants beyond reasonable doubt. In the presence of independent witnesses, who were present at the time of search, all the 81 bags were opened and thereafter sealed which were apparently containing doda-post and the same was confirmed upon testing, but for further affirmation, out of the one bag two samples were taken and sent for the FSL report and as per FSL report Ex. P. 19, positive findings were given.

27. Now the main plea taken by the accused-appellants is that since samples were taken from only one bag out of total 81 bags, therefore, for the purpose of convicting the accused-appellants, only contents of one bag can only be considered.

28. I am not convinced with the submissions made on behalf of the accused-appellants as in support of his submissions, the learned Counsel for the accused-appellants has referred the judgment rendered by the Hon'ble Supreme Court in the case of Gaunter Edwin Kircher v. State of Goa Secretariat Panaji Goa (supra) and a, bare perusal of the judgment reveals that on September 29, 1989 the Police Sub-Inspector Gaonkar, PW.3 along with a police party was patrolling at Calangute Bench near Panjim and they came across the accused who was sitting on a wooden log. On suspicion they went near him and noticed a chillum (smoking pipe) in front of him lying on the log. He secured the presence of panch witnesses and searched the accused and recovered a polythene pouch from his pyjama pocket in which there were tobacco, one cigarette paper packet and two cylindrical pieces of 'Charas'. The two pieces of Charas were weighed and found to be 7 gms and 5 gms respectively. They were seized under a panchnama and were separately sealed in two different envelopes. One of the pieces weighing less than 5 gms was sent for chemical analysis and the other piece weighing 7 gms was not sent nor part of it by way of sample was sent for chemical analysis. Maria Caldeira, PW.I, the Junior Scientific officer in the Directorate of Health Services carried out the chemical analysis of the substance weighting 4.570 gms consisting of three cylindrical pieces sticking together and she deposed that the substance which was examined by her was found to have contained Charas. PW.2, a panch witness supported the prosecution case. The accused when examined under Section 313 Cr. P.C. denied being in possession of any Charas and said that he had only a pouch containing tobacco and that he was taken to Calangute Police Station and was falsely implicated.

29. The main contention of the accused before the Hon'ble Supreme Court in the aforementioned case was that both the courts below have erred in holding that the accused was found in possession of 12 gms of Charas. Only a small quantity i.e. less than 5 gms has been sent for analysis and the evidence of PW. 1 the Junior Scientific Officer would at the most establish that only that much of quantity which was less than 5 gms of Charas is alleged to have been found with the accused. The remaining part of the substance which has not been sent for analysis cannot be held to be also Charas in the absence of any expert evidence and the same could be any other material like tobacco or other intoxicating type which are not

covered by the Act.

30. As per the Hon'ble the Supreme Court, the failure to send the other piece has given rise to this inference and observed as under:

We have to observe that to obviate this difficulty, the concerned authorities would do better if they send the entire quantity seized for chemical analysis so that there may not be any dispute of this nature regarding the quantity seized. If it is not practicable, in a given rise, to send the entire quantity then sufficient quantity by way of samples from each of the packets or pieces recovered should be sent for chemical examination under a regular panchnama and as per the provisions of law.

31. While considering the provisions of Section 27 of the Act, the Hon'ble Supreme Court has further observed that under this section the following ingredients should be fulfilled:

- (a) The person has been found in possession of any narcotic drug or psychotropic substance in 'small quantity';
- (b) Such possession should be an contravention of any provision of the Act or any rule of order made or permit issued thereunder; and
- (c) The said possession of any narcotic drug or psychotropic substance was intended for his personal consumption and not for sale or distribution.

32. In para N. 7, the Hon'ble Supreme Court has further observed as under:

7. Then the other ingredient that has to be satisfied as whether the substance found in possession of the appellant was intended for his personal consumption and not for sale or distribution. No doubt as the section lays down the burden is on the appellant to prove that the substance was intended for his personal consumption. As to the nature of burden of proof that has to be discharged depends upon the facts and circumstances of each case. Whether the substance was intended for personal consumption or not has to be examined in the context in which this exception is made. In the Instant case the accused though In general

has taken a plea of denial but his examination under Section 313 Cr. P.C., by the Magistrate reveals that there was such a plea namely that it was meant for his personal consumption. In the judgment of the trial Court it is noted that the accused made an application on March 23, 1990 stating that the piece said to have been recovered from him was less than 5 gms and not 12 gms as alleged and that the application was written and signed by the appellant himself. The prosecution case itself shows that he was having this substance in a pouch along with a chillum (smoking pipe) and smoking material. The averments made by the appellant in the application and as extracted by the trial Court would themselves show that it was meant for his personal consumption. The above surrounding circumstances under which it was seized also confirm the same. The appellant is a foreigner and as a tourist appears to have carried this substance for his personal consumption. We are aware that the menace of trafficking in narcotic drugs and psychotropic substances has to be dealt with severely but in view of the provisions of Section 27, we are unable to hold that the small quantity found with the appellant was not meant for his personal consumption and that on the other hand it was meant for sale or distribution. Therefore the appellant is liable to be punished as provided under Section 27 of the Act.

33. Applying the ratio decided by the Hon'ble Supreme Court in *Gaunter Edwin Kircher v. State of Goa Secretariat Panaji Goa* (supra), the case before the Hon'ble Supreme Court was that the accused was found smoking Charas and the examination of the accused under Section 313 Cr. P.C. by the Magistrate, reveals the fact that Charas recovered from the accused was for his personal consumption.

34. Here in the instant case, total 81 bags containing doda-post powder were recovered and total weight of these 81 bags comes to 3,078 kgs. Admittedly, this is a huge quantity and the same cannot be said to be less than the commercial quantity and the accused-appellants cannot take advantage of the judgment rendered by the Hon'ble Supreme Court in the case of *Gaunter Edwin Kircher v. State of Goa Secretariat Panaji, Goa* (supra) as the accused-appellants neither shown any licence by which they were authorised to deal with the doda-post powder nor there was any plea of the accused-appellants that the doda-post

recovered was for their personal consumption.

35. As observed by the Hon'ble Supreme Court in the case of Gaunter Edwin Kircher v. State of Goa Secretariat Panaji Goa (supra), the burden was on the appellants to prove that the substance was intended for their personal consumption. Thus, the ratio decided by the Hon'ble Supreme Court in the case of Gaunter Edwin Kircher v. State of Goa Secretariat Panaji Goa (supra) is not applicable to the facts and circumstances of the present case and is of no help to the accused-appellants.

36. Further I also minutely scanned the judgment rendered by the Jodhpur High Court in the case of Udailal v. State (supra), whereby the appeal of the accused Udailal has been allowed and the impugned judgment of conviction and order of sentence dated 2.12.2002 passed by the Special Judge, NDPS Cases, Chhitorgarh in, Sessions Case No. 58/2001- State v. Udai Lal and Anr. is set aside and the accused has been acquitted of the charges levelled against him.

37. I also gone through the judgment rendered by the Hon'ble Supreme Court in the case of State of Rajasthan v. Udai Lal (supra), whereby the judgment passed by the Jodhpur High Court dated 15.9.2005 in S.B. Criminal Appeal No. 1050/2002 - Udai Lal v. State (supra), has been quashed and set aside observing that 'Though the High Court found fault with the Special Judge in analyzing the evidence and other materials, on the other hand it is the High Court which failed to analyze the evidence in proper perspective and highlighted the minor irregularities/contradictions and acquitted the accused on flimsy grounds without assigning sound reasons.'

38. After setting aside the judgment passed by the Jodhpur High Court dated 15.9.2005, Hon'ble the Supreme Court remanded the matter back to the High Court for fresh adjudication and disposal on merit.

39. As per the learned Counsel for the accused-appellants, it is simply a remand order and the Hon'ble Supreme Court has not laid down any law. This Court is not convinced with the submissions made on behalf of the accused-appellants as the Hon'ble Supreme Court while remitting the matter back to the High Court, has

categorically observed that the High Court while acquitting the accused has considered the minor irregularities/contradictions and acquitted the accused on flimsy grounds.

40. Here in the case in hand also, technical plea has been taken by the accused-appellants that out of total 81 bags samples from only one bag were taken and, therefore, for convicting the accused-appellants the material contained in remaining 80 bags cannot be considered, but the trial Court while convicting the accused-appellants has considered the fact that recovery was made in front of the independent witnesses and all the 81 bags were opened and the contents of the bags were tested and upon testing it was observed that all the 81 bags contained doda-post powder and the same was confirmed by the samples which were taken from one bag and sent for chemical analysis and given positive report having contraband.

41. Admittedly the contraband recovered from the accused-appellants is not only more than the commercial quantity but also a huge quantity and the plea taken by the learned Counsel for the accused-appellants, is not sustainable. Hon'ble the Supreme Court in the case of State of Punjab v. Baldev Singh reported in 1999 SC 2378, has observed as under:

Drug abuse is a social malady. While drug addiction eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit ' activities including encouragement of terrorism. There is no doubt that drug trafficking, trading and its use, which is a global phenomena and has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country. It has the effect of producing a sick society and harmful culture. Anti-drug justice is a criminal dimension of social justice. The United Nations Conventions Against Illicit Trafficking In Narcotic Drugs and Psychotropic Substances which was held in Vienna, Austria in 1988 was perhaps one of the first efforts, at an international level, to tackle the menace of drug trafficking throughout the comity of nations. The Government of India has ratified this Convention.

42. Looking to the seriousness and nature of the offence and in view of the recovery of huge quantity of doda-post powder from the possession of the accused-appellants, I am not impressed with the submissions made by the learned Counsel for the accused-appellants that since the accused-appellants have already undergone the sentence of more than 5 years and 3 months in custody, therefore, the sentence awarded to them be reduced to the period already undergone by them.

43. In view of the aforesaid observations and in the light of the ratio decided by the Hon'ble Supreme Court in various judgments, this Court is of the view that the prosecution is able to establish the guilt against the accused-appellants beyond reasonable doubt and they have rightly been convicted under Section 8/15 of the Act of 1985 and sentenced to suffer rigorous imprisonment for 10 years with a fine of Rs. 1,00,000/- each, in default of payment of fine to further undergo rigorous imprisonment for one year each.

Thus, in the considered view of this Court, the impugned judgment of conviction and order of sentence dated 5.2.2005 passed by the Additional Sessions. Judge, Beawar requires no interference whatsoever by this Court and the same deserves to be upheld.

55. Consequently, the appeal fails and the same is hereby dismissed upholding the judgment dated 5.2,2005 passed by the Additional Sessions Judge, Beawar.